152 US 301
317
152 US 318

RECORD, CASE No. 14,541.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~1078~~. 684 414

THE KEOKUK AND WESTERN RAILROAD COMPANY, APPELLANT,

vs.

THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI; BENJAMIN F. BOURN, AS COLLECTOR OF REVENUE OF SAID COUNTY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED MARCH 28, 1891.

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1 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } ss:

In the Circuit Court of the United States in and for the Eastern Division of said Judicial District.

Be it remembered that on the sixth day of August, A. D. 1879, there was filed in the circuit court of the United States for the eastern district of Missouri a certain bill of complaint in words and figures following, to wit:

(*Bill of Complaint.*)

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR, JAMES F. SECOR, JOHN E. Walker, George S. KNOX, and Charles H. Mellen

vs.

JAMES K. SINGLETON, BENNETT KRATZER, S. B. Lind, Justices of the County Court of Schuyler County, Missouri; Frank A. Irwin, Collector of State and County Revenue of said County; Benjamin F. Bourn, Riley Gale, & E. E. Sparks, Justices of the County Court of Scotland County, Missouri, and Henry M. Gorin, Collector of State and County Revenue of said County of Scotland; Willis M. Boulware, Marcelus L. Chappell, & John Stafford, Justices of the County Court of Clarke Co., Mo., and George S. Stafford, Collector of said Clarke County, and The Missouri, Iowa & Nebraska Railway Company. } Bill in Equity.

2 To the honorable judges of the United States circuit court for the eastern district of the State of Missouri:

Your orators Charles A. Secor and James F. Secor are citizens of the State of New York and reside in the city of New York; John E. Walker and George S. Knox are citizens of the State of Illinois and residents of Hancock county, in said State; Charles E. Mellen is a citizen of the State of Iowa and a resident of Lee county, in said State.

And your said orators bring this their bill in equity against James K. Singleton, Bennett Kratzer, and L. B. Lind, who are justices of the county court of Schuyler county, Missouri, and Frank A. Irwin, who is the collector of State and county taxes of said Schuyler county, and Benjamin F. Bourn, Riles Gale, and E. E. Sparks, who are justices of the county court of Scotland county, Missouri, and

Henry M. Gorin, who is collector of said Scotland county; Willis M. Boulware, Marc-lus L. Chappell, and John Stafford, who are justices of Clarke county, in the State of Missouri, and George S. Stafford, who is collector of said Clarke county, and say that each and every of the said above-named defendants are citizens of the State of Missouri and residents in the eastern district of said State, and the Missouri, Iowa and Nebraska Railway Company, a corporation of the State of Missouri, owning and operating a line of railroad through the counties of Schuyler, Scotland, and Clarke, in the State of Missouri, being a citizen of the State of Missouri and located in the eastern district of said State.

And thereupon your orators complain and say—

1st. That by an act of the General Assembly of the State of Missouri, approved February 9th, 1857, entitled an "Act to incorporate the Alexandria and Bloomfield Railroad Company, the said
3 Alexandria and Bloomfield Railroad Company become and was duly and regularly incorporated under the laws of the State of Missouri and authorized to organize and to do and perform all the acts and things necessary to be done and performed in carrying out the objects of said charter, which objects were to construct and maintain and operate a line of railroad from Alexandria, in Clarke county, Missouri, to a point on the northern boundary line of the State of Missouri, in the direction of the town of Bloomfield, in the State of Iowa.

2. That thereafter, on the 13th day of September, A. D. 1864, the said Alexandria & Bloomfield railroad was organized & commenced operations.

3. That by an act of the General Assembly of the State of Missouri, approved Feb'y 19th, 1866, entitled "An act to amend an act entitled An act to incorporate the Alexandria & Bloomfield Railroad Company, approved Feb'y 9th, 1857," the said Alexandria and Bloomfield Railroad Company was authorized to change its corporate name to that of the Alexandria and Nebraska City railroad, and that thereafter, in pursuance to the authority granted by said act, the name of said corporation was so changed and was thereafter and until the time hereinafter designated continued to be known as & was the Alexandria & Nebraska City railroad.

4. That under and by authority of the general laws of the States of Missouri and Iowa the said Alexandria & Nebraska City railroad, of Missouri, and the Iowa Southern Railway Company, of the State of Iowa, were on the 3rd day of May, 1870, duly and legally consolidated, and that thereafter the said Alexandria & Nebraska City railroad and the said Iowa Southern Railway Company became & were merged and consolidated into one company and corporation under the corporate name of the Missouri, Iowa & Nebraska
4 Railway Company, & that under and by virtue of the general laws of the said States of Missouri and Iowa providing for consolidations of railroads connecting at the line of said States the said consolidated corporation, the Missouri, Iowa & Nebraska Railway Company, became and was and is vested, possessed, and invested with all the rights, privileges, and immunities and subject

to the duties & obligations imposed upon the said constituent companies in the said States of Missouri and Iowa respectively.

5. That by the provisions of the 9th section of the charter of the said Alexandria & Bloomfield Railroad Company, afterward the Alexandria & Nebraska City railroad and now the Missouri, Iowa & Nebraska Railway Company, it is provided that "the stock of said company shall be exempt from taxation for the period of twenty years after its completion," and that said railroad was completed to the northern boundary line of the said State of Missouri on the — day of ——, 187–, and that twenty years *has* not yet elapsed since the completion thereof.

6. Your orators, further complaining, say that the said Missouri, Iowa & Nebraska Railway Company's railroad is now located, constructed, and being operated in & through the counties of Clarke, Scotland, and Schuyler, in said State of Missouri, to the northern boundary line of the State of Missouri in said Schuyler county, a distance of about seventy miles, & that the said corporation, the Missouri, Iowa & Nebraska Railway Company, does not own or possess any property in the State of Missouri, real or personal, other than that which is necessary for the use and operation of said railroad and actually used for said purpose, and that the entire valuation of all the property of said corporation, real and personal, owned and used by it in the State of Missouri does not exceed in value the sum of one million dollars, and that not more than
5 that amount of stock has been issued upon said line of railroad in the State of Missouri.

7. Your orators, further complaining, say that they are each of them *bona fide* stockholders in said Missouri, Iowa & Nebraska Railway Company, and that the amounts of stock by them respectively owned and held in said company is as follows—that is to say:

Charles A. Secor owns one hundred shares of said stock, being ten thousand dollars.

James F. Secor owns one hundred shares of said stock, being ten thousand dollars.

George S. Knox, John E. Walker, and Charles H. Mellen owns each forty shares of said stock, being four thousand dollars each; that they purchased said stock and paid full value therefor, relying upon the provisions of said charter whereby the same was exempted from taxation in said State of Missouri.

8. Your orators, further complaining, show that the said stock and the property of the said railroad company in the said State of Missouri representing said stock is now & for a period of twenty years from the date of said completion of said railroad in the State of Missouri is to continue exempt from taxation, and that the same has been so decided and held by the circuit and supreme courts of the State of Missouri in the case of The County of Scotland against the Missouri, Iowa and Nebraska Railway Company, the decision whereof is reported in the 65th vol. of the Missouri Supreme Court Reports, at page- 123–138.

9. The defendants James K. Singleton, Bennett Kratzer, and S. B. Lind are the justices of the county court of Schuyler county, Mis-

souri, and Frank A. Irwin, def't, is the collector of said Schuyler county.

6 The defendants Benjamin F. Bourn, Riley Gale, and E. E. Sparks are the justices of the county court of Scotland county, Missouri, & Henry M. Gorin is the collector of said Scotland county; defendants Willis M. Boulware, Marcellus L. Chappell, and John Stafford are the justices of the county court of Clarke county, Missouri, and George S. Stafford is the collector of said county of Clarke.

That by the laws of the State of Missouri it is the duty of the said several justices of the said several county courts, sitting and acting as a county court in their said several and respective counties, to cause to be levied and collected the various taxes required to be levied by law in their said several and respective counties, and that their duties in respect thereto are ministerial and not judicial.

That it is the duty of the said several county collectors within their said several and respective counties to collect the various taxes authorized by law to be assessed and which under the provisions of law have been assessed within their said several and respective counties, and as a means thereto to levy upon personal property of tax-payers delinquent in the payment of taxes and to institute and maintain, in their official name to the use of the State and county, suits to enforce the collection of delinquent taxes against railroad corporations within their several and respective counties.

But your orators say that for the reasons heretofore set out and declared in this bill the said county courts of Schuyler, Scotland, and Clarke counties have no right, power, or authority to assess taxes against the said Missouri, Iowa and Nebraska Railway Company, its property or stock, for any purpose whatever.

7 But now so it is, may it please your honors, that, as your orators are informed and believe and so state the facts to be, the above-named defendants, combining and conspiring together and with others to your orators unknown, but whose names your orators ask they may have leave to insert in this petition when ascertained, with apt words to charge them as defendants herein, are going about to cause the said Missouri, Iowa and Nebraska Railway Company to pay taxes in the said State of Missouri and in the said counties of Clarke, Scotland, and Schuyler, in said State, notwithstanding the said exemption in said charter from taxation and the decisions therein rendered by the said courts of the State of Missouri.

That they and their associates have caused the property of the said railway company owned and used exclusively for the purpose of operating said railroad and necessary for its operation in the said counties to be assessed for taxation, and that the same has been so assessed and certified by the State board of equalization of the State of Missouri to the said counties for taxation for State, county, school, and municipal purposes, contrary to the provisions of said charter; that the said county court justices in their respective counties as county courts have ordered suit to be brought for delinquent taxes on the property of said railroad heretofore assessed in said State & counties, and have contracted and intend to con-

tract with attorneys-at-law to institute and maintain suits for such delinquent taxes and for such as may hereafter become delinquent, and in every way to proceed to and enforce collection of taxes against the property of said railroad company as the said defendants would be entitled by the laws of Missouri in such cases were it not for the exemption in the charter of said railway company as heretofore stated.

8 That it is the object, design, and intention of the defendants Irwin, Gorin, and Stafford, each in their respective counties, to proceed to collect said taxes and to institute, bring, & maintain suits for that purpose, and to harass and oppress, injure and defraud, said corporation out of the amount of said taxes, amounting in the aggregate to not less than from fifteen to twenty thousand dollars annually.

And your orators further represent that the said defendant, The Missouri, Iowa & Nebraska Railway Company, refuses to adopt any measures to prevent the collection of said taxes, and that your orators are left wholly without any remedy at law.

In consideration whereof and forasmuch as your orators can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable—

To the end, therefor-, that the said several defendants may, if they can, show why your orators should not have the relief prayed, and may, upon their several & respective corporal oath and according to the utmost of their several and respective knowledge, remembrance, information, and belief, full, true direct, and perfect answers make to such of the several interrogatories hereinafter numbered and set forth as by the note hereinunder written they are respectively required to answer—that is to say:

1. Whether the Alexandria & Bloomfield railroad was organized under its charter on the 13th day of September, A. D. 1864.

2. Whether, in pursuance to power granted in act of Feb'y 19th, 1866, the name of the Alexandria and Bloomfield R. R. was changed to that of the Alexandria & Nebraska City railroad.

3. Whether on the third day of May, 1870, the Alexandria and Nebraska City railroad was consolidated with the Iowa,
9 Southern Railway Company, and thereupon took the name of the Missouri, Iowa & Nebraska Railway Company.

4. Whether it is less than twenty years since the completion of the M., I. & N. R'y in the State of Missouri.

5. Whether the said M., I. & N. R'y Co. owns any property, real or personal, in the State of Missouri and in the counties of Clarke, Scotland, & Schuyler, in said State, other than what is necessary to be used in the operations of said railroad and other than is actually used for said purpose.

6. Whether the value of all the property owned & held & used by the M., I. & N. R'y in the said counties of Clarke, Scotland, & Schuyler, in the State of Missouri, exceeds the sum of one million dollars.

7. Whether more than one million dollars of stock has been issued on said line of railroad in the State of Missouri.

8. Whether the plaintiffs are stockholders in said Missouri, Iowa & Nebraska R'y Co., and own each the amount of stock averred in the bill to be owned by them respectively.

9. Whether the property of the M., I. & N. R'y in Missouri has not been decided by the supreme court of the State of Missouri to be exempt from taxation for a period of twenty years from the date of completion of said railroad in Missouri.

10. Whether the defendant Frank A. Irwin is not collector of State and county revenue in the county of Schuyler aforesaid, & whether he has not been ordered to collect taxes from the M., I. & N. R'y Co. in said county, and is intending to do so, unless restrained.

11. Whether H. M. Gorin is not collector of State and county revenue for the county of Scotland aforesaid, & whether he has not been ordered to collect taxes from said M., I. — N. R'y Co. in said county, and is intending to do so, unless restrained.

12. Whether George S. Stafford is not collector of State and county revenue for the county of Clarke, in said State, & whether he has not been ordered to collect taxes from said M., I. & N. R'y Co. in Clarke county, and is intending so to do, unless restrained.

13. What amount of taxes, for all purposes, are claimed to be due from said M., I. & N. R'y Co. in Schuyler county.

14. What amount of taxes, for all purposes, is claimed to be due from said M., I. & N. R'y Co. in Scotland county.

15. What amount of taxes, for all purposes, is claimed to be due from said M., I. & N. R'y Co. in Clarke county.

16. James K. Singleton, Bennett Kratzer, and S. B. Lind will answer whether they are not justices of the county court of Schuyler county, Missouri, and if they, as the county court of said county, are not causing to be assessed and collected State, county, school, and municipal taxes upon all the property of the Missouri, Iowa and Nebraska Railway Company in said county for the year 1879 and for several years prior thereto, and whether they are not intending to cause suits to be instituted for the collection of alleged delinquent taxes upon said railway property, or otherwise enforce collection of the same.

17. Benjamin F. Bourn, Riley Gale, and E. E. Sparks will answer whether they are not justices of the county court of Scotland county, Missouri, and if they, as the county court of said county, are not causing to be assessed and collected State, county, school, and municipal taxes upon all the property of the Missouri, Iowa and Nebraska Railway Company in said county for the year 1879 and for several years prior thereto.

And whether they are intending to cause suits to be instituted for collection of alleged delinquent taxes upon said railway property, or otherwise enforce collecting the same.

18. Willis M. Boulware, Marcelus L. Chappell, and John Stafford will answer whether they are not justices of the county court of Clarke county, Missouri, and if they, as the county court of said county, are not causing to be assessed and collected State, county, school, and municipal taxes upon all the property of the Missouri,

Iowa and Nebraska Railway Company in said county for the year 1879 and for several years prior thereto.

And whether they are not intending to cause suits to be brought for the collection of alleged delinquent taxes upon said railway property or otherwise enforce collection of the same.

19. The Missouri, Iowa and Nebraska Railway Company will answer whether it has not refused and neglected to adopt any measures to prevent the assessment and collection of taxes upon its property necessary to its use and operation as a railroad and being in Schuyler, Scotland, and Clarke counties.

Prayer.

And may it please your honors to grant unto your orators the writ of injunction issuing out of and under the seal of this honorable court or issued by one of your honors according to the form of the statute in such cases made and provided, directed to each of the defendants herein named, and commanding, enjoining, and restraining them as follows—that is to say, the defendants Frank A. Irwin, as collector of Schuyler county, Missouri; H. M. Gorin, as collector of Scotland county, Missouri; George S. Stafford, as collector of Clarke county, Missouri, each and every of them and their successors in office, to desist from further attempting to collect or receive from the said defendant The Missouri, Iowa & Ne-
12 braska Railway Company any money or other thing in payment of taxes from said railroad company for State, county, school, municipal, or other purposes, and to desist and refrain from any attempts so to collect said taxes by suit, levy, distraint, or sale of property or otherwise.

And that the said defendant The Missouri, Iowa and Nebraska Railway Company be commanded and enjoined and restrained from paying any taxes of any kind or nature whatsoever levied upon any of the property of said defendant in the said counties of Clarke, Scotland, and Schuyler or either of them.

That defendants Singleton, Kratzer, and Lind be enjoined and restrained, as the county court of Schuyler county, from levying and causing to be collected, or either, any taxes whatever, whether State, county, school, or municipal or otherwise, upon the property of defendant Missouri, Iowa and Nebraska Railway Company for the year 1879 or any year prior thereto, or from causing any such taxes heretofore levied from being collected by levy, distraint, sale of property, institution of suits, or otherwise, and that they do no act concerning the premises whatever.

That defendants Bourn, Gale, and E. E. Sparks, as such justices and county court of Scotland county, be enjoined and restrained from levying and causing to be collected, or from either or both, any taxes whatever, whether State, county, school, or municipal, upon the property of defendant Missouri, Iowa and Nebraska Railway Company for the year 1879 or any year prior thereto, or from causing any such taxes heretofore levied from being collected by levy, distraint, sale of property, institution of suits, or otherwise, and that they do no act concerning the premises whatever.

That defendants Boulware, Chappell, and Stafford, as such justices and county court of Clarke county, be enjoined and re-
13 strained from levying and causing to be collected, or either, any taxes whatever, whether State, county, school, municipal, or otherwise, upon the property of defendant Missouri, Iowa and Nebraska Railway Company for the year 1879 or any year prior thereto, or from causing any such taxes heretofore levied from being collected by levy, distraint, sale of property, institution of suits, or otherwise, and that they do no act concerning the premises whatever.

That upon exhibition of this bill your orators may have a provisional or temporary writ of injunction, to be made final & forever binding upon final hearing, and that your orators may have such further and other relief as the nature of the case may require and to this honorable court may seem meet.

And may it please your honors to grant to your orators a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to said James K. Singleton, Bennett Kratzer, S. B. Lind, Frank A. Irwin, Benjamin F. Bourn, Riley Gale, E. E. Sparks, Henry M. Gorin, Willis M. Boulware, Marcelus L. Chappell, John Stafford, and George S. Stafford and The Missouri, Iowa and Nebraska Railway Company, defendants, commanding them and each of them, on a day certain therein to be named and under a certain penalty, to be and appear in this honorable court, then and there to answer all and singular the premises and to stand to, perform, and abide such further order, direction, and decree as may be made against them; and your orator-, as in duty bound, will ever pray.

A. J. BAKER,
Solicitor for Complainant-.

A. J. BAKER AND F. T. HUGHES,
Of Counsel for Compl'ts.

UNITED STATES OF AMERICA, }
District of Iowa. }

14 John E. Walker, being duly sworn, deposeth and saith that he is one of the complainants in the foregoing bill named, and has read the same and knows the contents thereof.

That the said bill is true of his own knowledge except those matters therein stated to be on his information and belief, and those he believes to be true.

JOHN E. WALKER.

Sworn before me this 23d day of July, 1879.

[SEAL.] T. P. SHONTS,
Notary Public.

(*Note.*)

The defendants Frank A. Irwin, H. M. Gorin, and George S. Stafford are each required to answer interrogatories numbered 1, 2,

3, 4, 5, 6, 7, 8, and 9. Frank A. Irwin is required, in addition, to answer interrogatories numbered 10 & 13. H. M. Gorin is required, in addition, to answer interrogatories numbered 11 and 14. George S. Stafford is required, in addition, to answer interrogatories 12 & 15.

The defendants James K. Singleton, Bennett Kratzer, and S. B. Lind, in addition to interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, & 9, are required to answer interrogatory 16.

And defendants Bourn, Gale and Sparks, in addition to numbers 1 to 9, inclusive, are required to answer interrogatory 17.

And defendants Boulware, Chappell, and Stafford, in addition to numbers 1 to 9, inclusive, are required to answer interrogatory 18.

And defendant Missouri, Iowa and Nebraska Railway Company, in addition to numbers 1 to 9, inclusive, *are* required to answer interrogatory number 19.

A. J. BAKER AND F. T. HUGHES,
Solicitors & of Counsel for Compla-n-ts.

15 And afterwards, to wit, on the nineteenth day of August, A. D. 1879, the following, among other, proceedings were had and appear of record in said cause, to wit:

(*Motion for Injunction Heard and Submitted.*)

CHARES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

This cause, coming on to be heard on this 19th day of August upon the bill of complaint heretofore filed herein on the 6th day of August, 1879, and the motion of complainants for an injunction, the complainants appearing by their solicitors, Messrs. F. T. Hughes and A. J. Baker, and the defendants by Messrs. E. K. McKee, J. M. Knott, B. E. Turner, S. W. Birch, and Waldo P. Johnson, their solicitors, and the same having been argued by counsel, was submitted and by the court taken under advisement.

And afterwards, to wit, on the twenty-seventh day of August, A. D. 1879, the following further proceedings were had and appear of record in said cause, to wit:

(*Order for Injunction.*)

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

This day come the said parties, by their respective solicitors, and the court, being now fully advised in the premises, doth order, adjudge, and decree that the said defendants, James K. Singleton, Bennett Kratzer, and S. B. Lind, justices of the county
16 court of Schuyler county, Missouri; Frank A. Irwin, collector of State and county revenue of said county; Benjamin

F. Bourn, Riley Gale, and E. E. Sparks, justices of the county court of Scotland county, Missouri, and Henry M. Gorin, collector of State and county revenue of Scotland county; Willis M. Boulware, Marcellus L. Chappell, and John Stafford, justices of the county court of Clarke county, and George S. Stafford, collector of said Clarke county, and The Missouri, Iowa and Nebraska Railway Company, be, and are hereby, enjoined and restrained from levying and causing to be collected, or either, any taxes whatever, whether State, county, school, municipal, or otherwise, upon the property of the defendant The Missouri, Iowa and Nebraska Railway Company for the year 1879 or any year prior thereto, or from causing any such taxes heretofore levied to be collected by levy, distraint, sale of property, institution of suits, or otherwise, and that they do not act concerning the premises.

It is further ordered that writs of injunction issue herein in accordance with this decree and that the same remain in force until the further order of this court.

And afterwards, to wit, on the first day of September, A. D. 1879, there was issued out of said court a writ of injunction, which, with the marshal's return of service endorsed thereon, is in words and figures following, to wit:

(*Writ of Injunction.*)

UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

The President of the United States of America to James
17 K. Singleton, Bennett Kratzer, S. B. Lind, justices of the county court of Schuyler county, Missouri; Frank A. Irwin, collector of State and county revenue of said county; Benjamin F. Bourn, Riley Gale, and E. E. Sparks, justices of the county court of Scotland county, Missouri, and Henry M. Gorin, collector of State and county revenue of said county of Scotland; Willis M. Boulware, Marcellus L. Chappell, and John Stafford, justices of the county court of Clarke county, and George S. Stafford, collector of said Clarke county, and the Missouri, Iowa and Nebraska Railway Company, Greeting:

Whereas Charles A. Secor, James F. Secor, John E. Walker, George S. Knox, and Charles H. Mellen have exibited their bill of complaint before our circuit court of the United States for the eastern district of Missouri, on the 19th day of August, A. D. 1879, against you, praying to be relieved touching the matters therein complained of; and

Whereas on the 27th day of August, 1879, by an order of our said court, it was ordered that a temporary writ of injunction issue to restrain you and each and every of you from doing all the matters and things from the doing of which you are prayed to be restrained in said bill:

We, therefore, in consideration thereof, enjoin and command you,

each and every of you, that from and immediately after the receipt and notice of this our writ you shall not levy and collect or cause to be levied and collected any taxes whatever, whether State, county, school, municipal, or otherwise, upon the property of the defendant The Missouri, Iowa and Nebraska Railway Company for the year 1879 or any year prior thereto, or from causing any such taxes heretofore levied to be collected by levy, distraint, sale of property, institution of suits, or otherwise, and that you do not act in the premises.

18 This injunction to remain in force until the further order of this court. Hereof fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 1st day of September, A. D. 1879.

Issued at office, in the city of St. Louis, under the seal [SEAL.] of said circuit court, the day and year last aforesaid.

M. M. PRICE, *Clerk*,
By T. L. CRAWFORD, *D. C.*

(*Marshal's Return.*)

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

I return on this writ that I have delivered one original writ of injunction in this case to each one of the following-named persons, to wit, Henry M. Gorin, collector of State and county revenue of Scotland county, Missouri, on the 3d day of September, 1879; Benjamin F. Bourn, Riley Gale, & E. E. Sparks, justices of the county court of Scotland county, Missouri, on September 4th, A. D. 1879, all in Scotland county, in the above district.

H. W. LEFFINGWELL.
U. S. Marshal,
By C. E. SOEST, *Deputy*.

4 services	8 00
262 miles	15 72
	23 72

On the first day of September, A. D. 1879, the following further proceedings were had and appear of record in said cause, to wit:

(*Service of Process Waived.*)

19 CHARLES A. SECOR *et al.*, Complainants,
vs.
JAS. K. SINGLETON *et al.*, Defendants. } 1505.

This day come all the defendants except the county judges and collector of Scotland county and waive service of writ of injunction or other process herein.

And afterwards, to wit, on the sixteenth day of September, A. D. 1879, there was filed in said cause a motion for rule on defendants for contempt in words and figures following, to wit:

(Motion for Rule on Defendants for Contempt.)

In Circuit Court United States, September Term, 1879.

CHARLES A. SECOR *et al.*
vs.
JAS. K. SINGLETON *et al.*

Plaintiffs state that heretofore, on the 6th day of August, A. D. 1879, the complainants herein filed in this court their bill, praying, among other things, that defendants James K. Singleton, A. W. Lind, and Bennett Kratzer, as justices of the county court of Schuyler county, be restrained and forever enjoined from levying and causing to be collected, and from causing to be collected by the institution of suits in various courts by levy and sale of property or otherwise, any taxes whatever, levied or to be levied, now delinquent or to become delinquent, upon the property of the Missouri, Iowa, and Nebraska Railway Company situated in the said county of Schuyler.

20 That prior to the 19th day of August, 1879, complainants caused defendants to be duly served with notice to the effect that on the said 19th day of August they would move the court for a provisional injunction in said cause and for all such orders and decrees as might be necessary to carry into effect the objects of said bill during the pendency of said suit.

That in pursuance to said notice complainants did on said day, at about ten of the clock, move this court for such provisional injunction, and that at the hearing of said motion these defendants duly appeared, by counsel E. R. McKee, Jas. M. Knott, B. E. Turner, S. W. Birch, and Waldo P. Johnson, and joined in the argument before the court upon said motion.

Complainants further show that at the argument of said motion they, by their counsel, announced themselves ready and willing to enter into any bond or other obligation which the court might require in order to carry into effect the judgment of the court, such as it might be; but this court, desiring to more fully investigate the questions of law arising in the cause upon said motion, took the same under advisement until August 27th, 1879, when the order was made and entered of record in this court granting said provisional injunction, which order has been duly served upon defendants and is now in full force and effect.

Plaintiffs complain of the action of defendants James K. Singleton, A. W. Lind, and Bennett Kratzer in this, that on the said 19th day of August, 1879, after said motion had been argued and submitted to this court and after this court had taken the same under advisement and announced to the counsel of both parties that he would at a day in the near future announce its decision upon the

matter so submitted, — did, for the purpose of forestalling the
21 orders and decrees of this court in the cause then pending and over which the court had acquired jurisdiction, cause to be filed in the office of the clerk of the Schuyler county circuit court of Missouri a petition whereby suit was commenced against the said Missouri, Iowa and Nebraska Railway Company to recover for past-due taxes assessed in said county against said railway company; that said petition was signed by J. M. Knott, as attorney, who is the same person who was attorney for said county in the said injunction bill in this court.

That the said county court justices and the said J. M. Knott at the time of commencing said suit well knew that this court had acquired jurisdiction of the cause and of the parties and subject-matter of said suit and was then proceeding to determine it, and the whole purpose and design of the said defendants in bringing said suit was to forestall and oust this court of its jurisdiction to determine and grant the relief prayed for in the relators' bill in equity.

That after this court had announced its decision granting said provisional injunction and after the said defendants, Singleton, Lind, & Kratzer, had been notified of the same, the said defendants caused a summons to be served by the sheriff of said Schuyler county upon the said Missouri, Iowa and Nebraska Railway Company, commanding and notifying it to appear and answer to said suit to collect said taxes.

Relators, complaining, say that all of the said proceedings of the said defendants, Singleton, Lind, & Kratzer, in instituting said suit in the said Schuyler circuit court, after this court had acquired jurisdiction of the persons of said defendants and of the subject-matter of said controversy, *was* and *is* null and void and in contempt of the authority of this court and calculated to bring its acts
22 into contempt and to interrupt and annul the judgments and decrees of this court over matters in which it had acquired and was proceed- to exercise jurisdiction.

Wherefore relators ask that a rule be granted and directed to said defendants, Singleton, Lind, and Kratzer, citing them to forthwith appear and show cause, if any they have, why they should not be attached and punished for contempt in violating the provisions of said injunction.

F. T. HUGHES AND A. J. BAKER,
Counsel for Relators.

UNITED STATES OF AMERICA, }
Eastern Dist. of Missouri. }

I, F. T. Hughes, on oath say that I am one of the attorneys in the foregoing cause, and that the matters stated in the foregoing motion, so far as they are on my own personal knowledge, are true, and that so far as they are stated on information and belief I believe to be true.

F. T. HUGHES.

Subscribed and sworn to before me this 16th day of September, 1879.

C. M. WARD,
U. S. Com'r, East. Dist. Mo.

And afterwards, to wit, on the seventeenth day of September, A. D. 1879, the following further proceedings were had and appear of record in said cause, to wit:

(*Bill Amended by Leave.*)

CHARLES A. SECOR *et al.*, Complainants,
vs.
J. K. SINGLETON *et al.*, Defendants. } 1505.

23 This day come the complainants by solicitor, and by leave amend their bill herein by inserting the name of "A. B. Lind" wherever the name "S. B. Lind" occurs.

And afterwards, to wit, on the eighteenth day of November, A. D. 1879, there was filed in said cause an answer in words and figures following, to wit:

(*Answer.*)

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR *et al.*, Pl'ffs,
vs.
JAMES K. SINGLETON *et al.*, Def'ts. } Bill in Equity.

These respondents, Benjamin F. Bourn, Riley Gale, and E. E. Sparks, judges of the county court of the county of Scotland, and Henry M. Gorin, collector of the State and county revenue for the said county of Scotland, come and for their joint and separate answer to the bill of complaint filed in this cause answer and say:

These respondents deny each and every allegation in said bill of complaint except as hereinafter admitted.

1st. These respondents, further answering, say that they admit that by an act of the General Assembly of the State of Missouri, approved Feb. 9th, 1857, entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company," that James Cowgill, Robert E. Hill, Wm. C. Young, A. Maxwell, De Kalb Musgrave, Robert McKee, Thomas C. Rutherford, Francis Smith, Sam. James Fletcher, Willis Curd, Joseph I. Benning, and Reynolds Bane, of the county

24 of Clarke, and all such persons as may thereafter become stockholders in the said company, were incorporated under the laws and authorized to organize as an incorporated company; but these respondents are informed and believe that said James Cowgill, Robert E. Hill, Wm. C. Young, A. Maxwell, De Kald Musgrave, Robert McKee, Thomas C. Rutherford, Francis Smith, Sam. James Fletcher, Willis Curd, Joseph I. Benning, and

Reynolds Bane never did organize a corporation known as "the Alexandria and Bloomfield Rail- Company" under said act of the General Assembly aforesaid, and therefore deny that any organization was made of such company, and require strict proof of all allegations in relation thereto.

2. These respondents are informed and believe and so charge that the parties named in section 1 of the aforesaid act did not on the September 13, A. D. 1864, or at any time organize the said Alexandria and Bloomfield Railroad Company and commence operations, and therefore deny the same, and require strict proof thereof.

3. These respondents admit that the printed acts of the General Assembly of the State of Missouri for a session of said General Assembly began and held on the 1st day of November, 1865, contain an act, approved 19th day of February, 1866, entitled "An act to amend an act entitled 'An act to incorporate the Alexandria & Bloomfield Railroad Company,' approved Feb. 9th, 1857," with additional title, by which the Alexandria and Bloomfield Railroad Company was authorized to change its corporate name to that of the Alexandria and Nebraska City railroad; but these respondents are advised and believe that said act approved 19th Feb., 1866, never was passed by the two houses of the General Assembly in the manner required and provided by the constitution of the State of Missouri, which took effect upon the 4th of July, 1865, and for that reason said act is void and of no force and effect, and require proof of the same.

These respondents, further answering, say that as to whether, in pursuance of supposed authority conferred by the act of the 19th Feb., 1866, aforesaid, the name of the Alexandria and Bloomfield Railroad Company was thereafter changed, designated, and known as the Alexandria & Nebraska City railroad these respondents have no sufficient knowledge or information sufficient to form a belief, and require strict proof of the same.

That whether or not, under and by authority of the general laws of the States of Missouri and Iowa, the said Alexandria & Nebraska City railroad, of Missouri, and the Iowa Southern Railway Company, of the State of Iowa, were, on the 3d day of May, 1870, duly and legally consolidated, or that thereafter the said Alexandria and Nebraska City railroad and the said Iowa Southern Railway Company became and were merged and consolidated into one company and corporation under the corporate name of the Missouri, Iowa and Nebraska Railway Company, or that under or by virtue of the laws of the States of Missouri and Iowa providing for consolidation of railroads connecting at the line of said States the said consolidated corporations became and was the Missouri, Iowa & Nebraska Railway Company or became and was vested, possessed, and invested with all the rights, privileges, and immunities and subject to the duties & obligations imposed upon the said constituent companies in the said States of Missouri and Iowa, respectively, these respondents have no sufficient knowledge or information to form a belief as to the truth thereof — allegations, and require strict proof of the same.

But state that if such consolidation was had and said companies became and were merged into one, the Missouri, Iowa and Nebraska Railway Company so formed became and is a new company
26 existing under and by virtue of the general laws of the State only, and is not entitled to the immunity of exemption from taxation by virtue of the charter of the Alexandria and Bloomfield Railroad Company, but by such consolidation such new company became and is subject to all the liens in force at the time of such consolidation and is subject to taxation.

5th. These respondents admit that by the provisions of the 9th section of the charter authorizing the organization of the Alexandria and Bloomfield Railroad Company it is provided that "the stock of said company shall be exempt from taxation for the period of twenty years after its completion," but *as* the parties authorized to organize said company, as these respondents are informed and believe, never did organize said Alexandria and Bloomfield Railroad Company, but that the said so-called Alexandria and Bloomfield Railroad Company, if organized at all, was done by persons without authority of law, and they cannot claim the benefit of said exemption in section 9 of the charter aforesaid; and these respondents further admit that twenty years *has* not yet elapsed since the completion of the railroad now called the Missouri, Iowa & Nebraska Railway Company, which these respondents claim is not entitled to any exemption from taxation in the State of Missouri. These respondents further state that by the terms of said charter of the Alexandria & Bloomfield Railroad Company said company was authorized to construct a railroad in Clarke county only and not in Scotland county.

6th. These respondents admit that said so-called Missouri, Iowa and Nebraska Railway Company's railroad is now completed and operated in and through the counties of Clarke, Scotland, and Schuyler, in said State of Missouri, to the northern boundary line of the State of Missouri, in said Schuyler county, a distance
27 of about seventy miles, and that whether or not the said corporation known and called the Missouri, Iowa and Nebraska Railway Company does not own or possess any property in the State of Missouri, real or personal, other than that which is necessary for the use and operation of said railroad or actually used for said purpose these respondents have not sufficient knowledge or information to form a belief, and require proof thereof; and as to whether or not the entire valuation of all the property of said corporation, real and personal, owned and used by it in the State of Missouri exceeds the value of one million dollars these respondents have no sufficient knowledge or information to form a belief, and require strict proof.

7. That whether or not the complainants are each of them *bona fide* stockholders in said Missouri, Iowa & Nebraska Railway Company, and that amounts of stock by them respectively owned and held is as alleged in said bill of complaint, these respondents have no sufficient knowledge or information to form a belief, and require strict proof thereof.

8. That as to whether or not these several complainants purchased said stock and paid full value therefor, relying upon the provisions of said charter whereby the same was exempted from taxation in said State of Missouri, these respondents have no sufficient knowledge or information to form a belief; but, if these respondents have been correctly informed, these complainants might have ascertained, by a full examination of the laws of Missouri, and especially of the charter authorizing the organization of the Alexandria and Bloomfield Railroad Company, that it never was organized by those who were authorized so to do by the law.

8. These respondents admit that the circuit court of Scotland county and the supreme court of the State of Missouri, in a
28 case wherein The County of Scotland was plaintiff and the so-called Missouri, Iowa and Nebraska Railroad Company was defendant, and which is reported in vol. 65 of the Mo. Reports, passing only upon an agreed statement of — made in that case, did decide that the stock of said railroad company was exempt from taxation for a period of twenty years, but these respondents are advised by their counsel that improper admissions were made in said agreed statement for and on behalf of the county of Scotland; that points made in this answer were not made or set forth in said agreed statement of facts, and that points are made and defences set up in this answer which were not made or set up by Scotland county in the agreed statement of facts passed upon by the circuit court of Scotland county and the supreme court of the State.

9. These respondents admit that Benjamin F. Bourne, Riley Gale, and E. E. Sparks — judges (not justices) of the county court of Scotland county, and that Henry M. Gorin is the collector of the State and county revenue for said county of Scotland, and also admit that by the laws of the State of Missouri it is the duty of the several judges of the said several county courts sitting and acting as a county court in their several and respective counties to cause to be levied and collected the various taxes required to be levied by law in their respective counties, and that their duties in respect thereto are created by general laws of the State of Missouri, of which judicial notice is taken by this court.

These respondents further admit that it is the duty of the said several and respective county collectors within their said several and respective counties to collect the various taxes authorized
29 by law to be assessed and which, under the provisions of law, have been assessed within their said several and respective counties, and as a means thereto to levy upon personal property of tax-payers delinquent in the payment of taxes and to institute suits in their official name to the use of the State and county to enforce the collection of delinquent taxes against railroad corporations within their several counties.

These respondents do not admit but deny the allegation set out in the bill of complaint that they have no authority, right, or power to assess taxes against the said so-called Missouri, Iowa and Nebraska Railway Company, its property or stock, for any purpose whatever, and they claim that the county court of Scotland county

is by the law of the State authorized to levy and cause to be collected taxes of and from the said so-called Missouri, Iowa and Nebraska Railway Company.

These respondents deny any combination or conspiracy with or without others to complainants unknown to cause the said so-called Missouri, Iowa and Nebraska Railway Company to pay any illegal taxes; but, further answering, these respondents say, after taking the advice of their official legal counsel, they have done what they could to cause the property owned by the aforesaid railway company in the county of Scotland to be assessed for taxation, and that the same has been assessed and certified *to* the State board of equalization of the State of Missouri to the said counties for taxation for all purposes, not contrary to but in accordance with the laws of the State.

These respondents further admit that they expect to use all lawful ways and means to collect the taxes assessed against the property of the so-called Missouri, Iowa and Nebraska Railway Company, and that respondent Gorin, collector in the county of Scotland, intends, if not restrained by law and higher authority
30 than the county court of Scotland, to proceed by suit and otherwise to collect all the taxes assessed against said last-named railway company, not for the purpose of harrassing, oppressing, injuring, or defending said corporation, but for the purpose of collecting the taxes said respondent is advised *has* been lawfully assessed against the property of said railway company.

These respondents have no knowledge or information sufficient to form a belief as to what course the so-called Missouri, Iowa and Nebraska Railway Company intend to pursue in relation to the taxes assessed against the property of said company, but these respondents are strongly inclined to the opinion that said company will pursue whatever course these complainants may desire in the premises.

These respondents, in further answering the complainants' bill of complaint, proceed to answer the several interrogatories propounded to them as follows:

In answer to the 1st interrogatory, these respondents say they are informed and believe and so charge the fact to be that the parties named in the first section of the act entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company, to wit, James Cowgill, Robert E. Hill, Wm. C. Young, A. Maxwell, De Kalb Musgrave, Robert McKee, Thomas C. Rutherford, Francis Smith, Sam. James Fletcher, Willis Curd, Joseph I. Benning, and Reynolds Bane, never did organize said company on the 13th day of September, 1864, or at any other time; and, further, they are informed and believe that if any company by the name of the Alexandria and Bloomfield Railroad Company was ever organized, it was not organized in conformity to said charter, and neither said company nor those who have succeeded to its rights are entitled to exemption from taxation under the laws of Missouri.

31 These respondents, for answer to the 2nd interrogatory, say: As to whether in pursuance to power granted in act of Febru-

ary 19, 1866, the name of the Alexandria and Bloomfield R. R. was changed to that of the Alexandria and Nebraska City railroad, these respondents have no sufficient knowledge or information to form a belief, and ask strict proof thereof.

In answer to the third interrogatory, these respondents have no sufficient knowledge or information to form a belief as to whether or not on the third day of May, 1870, the Alexandria and Nebraska City railroad was consolidated with the Iowa Southern Railway Company, or thereupon took the name of the Missouri, Iowa and Nebraska Railway Company, but state the fact to be that if such consolidation was had the Missouri, Iowa and Nebraska Railway Company, so formed, became and is a new company, existing under and by virtue of the general laws of the State only, and is not entitled to the immunity of exemption from taxation by virtue of the charter of the Alexandria and Bloomfield Railroad Company.

In answer to the 4th interrogatory, these respondents say it is less than twenty years since the completion of the so-called Mo., I. and N. R'y in the State of Mo.

In answer to the 5th interrogatory, these respondents have no knowledge or information sufficient to form a belief as to what personal and real property is owned in the counties of Clark, Scotland, and Schuyler by the Mo., I. & N. R'y Co. or whether said company has or has not any property other than what is necessary to be used in the operations of said railroad.

In answer to the 6th interrogatory, these respondents say they have no sufficient knowledge or information to form a belief as to whether the value of the property of said M., I. & N. R'y Co. is more or less than one million of dollars.

32 In answer to the 7th interrogatory, they have no knowledge or information *that* as to whether more than one million of dollars of stock has been issued on said line of railroad in the State of Missouri, and demand strict proof thereof.

In answer to the 8th interrogatory, these respondents say they have no knowledge or information sufficient to form a belief as to the amount of stock held by either of complainants in the so-called Missouri, Iowa and Nebraska Railway Co. and require strict proof thereof.

In answer to the 9th interrogatory, these respondents admit that there was a decision of the supreme court of the State of Missouri heard upon an agreed statement of facts, wherein it was decided that the property of the so-called M., I. & N. R'y Co. in Missouri was exempt from taxation for a period of twenty years from date of completion, but these respondents are advised and believe that improvident and improper admissions were made in that case; that points were omitted that ought to have been made, and that the case made by the pleadings in this is different in material metters from the agreed facts decided by the supreme court of Mo.

In answer to the 14th interrogatory, these respondents say that the amount of taxes now claimed to be due to the county of Scotland is twenty-five thousand dollars, more or less.

In answer to the 17th interrogatory, these respondents *and* say

that Benj. F. Bourne, Riley Gale, and E. E. Sparks are judges (not justices) of the county court of Scotland county, Missouri, and further state that, as the county court of said county, they did their best to have assessed and collected State, county, school, and municipal taxes upon all the property of the M., I. and N. R'y Co.
33 in said county for the year 1879 and for some years prior thereto, and, if not prevented by high authority, they intend to cause to be collected, by suits & otherwise, all delinquent taxes upon the property of said railway company.

These respondents, having fully answered all the allegations in the complainants' bill of complaint, ask that the case may be dismissed and these respondents allowed their reasonable costs.

WALDO P. JOHNSON,
E. R. McKEE,
Attorneys for Respondents.

STATE OF MISSOURI, } ss:
County of Scotland, }

Benjamin F. Bourne, Riley Gale, E. E. Sparks, and Henry M. Gorin make oath and say the matters and facts in above answer stated are true, as they are informed and verily believe.

BEN. F. BOURN.
E. E. SPARKS.
RILEY GALES.
H. M. GORIN.

Subscribed and sworn to before me this 17th day of November, 1879.

[SEAL.]

W. W. CUNNORT,
Clerk Scotland Co. Court.

And afterwards, to wit, on the seventh day of January, A. D. 1880, the following further proceedings were had and appear of record in said cause, to wit:

(*Amended Bill Filed, &c.*)

CHARLES F. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

34 This day come the complainants, by their solicitors, and by leave of court file their amended bill of complaint herein, subject to defendants' objections.

And afterwards, on said day, the parties hereto, by their solicitors, file a stipulation that in the event said amended bill be stricken from the files the complainants shall have ten days from such action to file their replication to the answer on file to the original bill herein.

Said amended bill is in words and figures following, to wit:

(*Amended Bill.*)

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR, JAMES F. SECOR, JOHN E. WALKER, GEORGE S. KNOX, and CHARLES H. MELLEN, Complainants,

vs.

THOMAS HALLADAY, Auditor of the State of Missouri; The County of Schuyler, in the State of Missouri; Bennett Kratzer, James K. Singleton, and A. W. Lind, Justices of the County Court of said Schuyler County, and Frank A. Irwin, Collector of State and County Revenue for said Schuyler County; The County of Scotland, in the State of Missouri; Benjamin F. Bourn, E. E. Sparks, and Riley Gale, Justices of the County Court of said Scotland County; Henry M. Gorin, Collector of State and County Revenue for said Scotland County; The County of Clark, in the State of Missouri; Willis M. Boulware, Marcellus L. Chappell, and —— ——, Justices of the County Court of said Clark County, and George L. Stafford, Collector of State and County Revenue of said Clark County, and the Missouri, Iowa and Nebraska Railway Company, Defendants.

Bill in equity.

Charles A. Secor & James F. Secor, citizens and residents of the State of New York; John E. Walker and George S. Knox, citi-
35 zens and residents of the State of Illinois, and Charles H. Mellen, a citizen and resident of the State of Iowa, bring this their amended bill (for the purpose of making additional parties defendants as prayed in their original bill) against Thomas Halladay, auditor of the State of Missouri; the County of Schuyler, in the State of Missouri; Bennett Kratzer, James K. Singleton, and A. W. Lind, justices of the county court of said Schuyler county; Frank A. Irwin, collector of the revenues in and for said Schuyler county; the County of Scotland, in the State of Missouri; Benjamin F. Bourn, Ephraim E. Sparks, and Riley Gale, justices of the county court, and Henry M. Gorin, collector of revenues in and for said Scotland county; the County of Clark, in the State of Missouri; Willis Boulware, Marcellus L. Chappelle, and James Eagon, justices of the county court, and George S. Stafford, collector of the revenues in and for said Clark county, each of which said counties are organized counties in the State of Missouri, and each of the above-named officials are citizens and residents of the State of Missouri, and the Missouri, Iowa and Nebraska Railway Company, a corporation existing in the State of Missouri under the laws thereof.

Your orators ask that all of the persons, officers, and counties and the county courts of said counties and the said Missouri, Iowa, and Nebraska Railway Co., hereinbefore mentioned as defendants, be made parties defendant herein.

And thereupon, your orators humply complaining, say—

That by an act of the General Assembly of the State of Missouri, approved February 9th, 1857, entitled An act to incorporate the Alexandria and Bloomfield Railroad Company, the said Alexandria and Bloomfield Railroad Company became and was duly and legally incorporated under the laws of the State of Missouri and authorized and empowered to organize and to do and per-
36 form all the acts and things necessary to be done and performed in carrying out the objects of said charter, which objects were to construct, maintain, and operate a line of railway from Alexandria, in Clark county, Missouri, to a point on the northern boundary line of the State of Missouri, in the direction of the town of Bloomfield, in the State of Iowa, and at such point on said boundary line as should be agreed upon between said Alexandria & Bloomfield Railroad Company and a like corporation to be organized under the laws of the State of Iowa for the purpose of connecting therewith.

2. That thereafter, on the 13th day of September, A. D. 1864, the said Alexandria and Bloomfield Railroad Company was organized and commenced the transaction of it- corporate business.

3. That by an act of the General Assembly of the State of Missouri, approved Feb'y 19th, 1866, entitled "An act to amend an act entitled An act to incorporate the Alexandria & Bloomfield Railroad Company, approved Febr'y 9th, 1857," the said Alexandria and Bloomfield Railroad Company was authorized to change the name of said company to that of the Alexandria and Nebraska railroad, and that thereafter, in pursuance of the authority conferred by said legislative enactment, the name of said corporation was changed and was thereafter & until the time hereinafter stated known as and was the Alexandria and Nebraska City railroad.

4. That thereafter, under and by authority of the laws of the respective States of Missouri and Iowa, the said Alexandria and Nebraska City railroad was consolidated with the Iowa Southern Railway Company, a corporation in the State of Iowa, and from that time forth the said corporation has been known as and is the Missouri, Iowa and Nebraska Railway Company, the name taken by said consolidated corporation at the date of said consolidation.

37 That under and by virtue of the respective laws of the said State- of Missouri and Iowa the said consolidated corporation became and is vested with all the rights, privileges, and immunities of the original constituent corporations in the said respective States of Missouri & Iowa.

5. That by the provisions of the 9th section of the charter of said Alexandria & Bloomfield Railroad Company, approved Feb'y 9th, 1857 (which said section is incorporated in and made a part of this bill in the words following, to wit):

"SECT. 9. The stock of said company shall be exempt from taxation for the period of twenty years after its completion," the said Alexandria & Bloomfield Railroad Company was, as its successor, the said Missouri, Iowa and Nebraska Railway Company, is, exempt from taxation upon its stock and all property represented by said

stock in the State of Missouri for said period of twenty years after its said completion; and complainant avers that said railroad was completed to the Iowa State line on the — day of December, 1872, and not before, and that the same has been from that time until now and still is exempt from taxation within the State of Missouri, and that the said exemption will continue to exist until the — day of December, 1892; that the circuit and supreme courts of the State of Missouri have so decided in the case of Scotland County against the Missouri, Iowa and Nebraska Railway Company, reported in the 65 Missouri Reps., at page- 123-128.

Your orators further state that the said Missouri, Iowa and Nebraska railway's railroad is now completed and in operation from the city of Alexandria, in Clark county, Missouri, through the counties of Clark, Scotland, and Schuyler, in the State of Missouri, to the Missouri & Iowa State line, in said Schuyler county, a distance of about seventy miles, and that the said corporation,
38 the Missouri, Iowa and Nebraska Railway Company, does not own or possess in said counties any property, real or personal, other than is used in the operations of said railroad or other than is necessary to said use, and that the entire valuation of the property so owned and used in said counties by said corporation does not exceed in value the sum of one million of dollars, and that not more than that amount of stock has been issued upon that proportionate distance of said railroad.

Your orators further state the shares of said stock are of one hundred dollars each, and are largely owned by parties not citizens of the State of Missouri; that in fact a large majority of said stock is owned by parties who are citizens of States other than the State of Missouri; but that, owing to the great number of persons so owning said shares, your orators are unable to give their names and residences of said respective stockholders.

Your orators state that they are each the owners and holders of large amounts of said stock of the said Missouri, Iowa and Nebraska railway; that the amounts of stock owned and held by them respectively are as follows:

Charles A. Secor and James F. Secor each owns one hundred shares of said stock of the par value of ten thousand dollars to each of said plaintiffs; George S. Knox, John E. Walker, and Charles H. Mellen own each forty shares of said stock of the par value of four thousand dollars to each of said plaintiffs.

Your orators further show that the defendant Thomas Halladay is the State auditor of the State of Missouri, and that as such auditor it — his duty to certify to the county courts of the various counties through which any railroad subject to taxation under the
39 laws of the State may be located the value of such R. R. upon which assessments of taxes in said counties are to be made as the same is certified to him (said auditor) by the State board of equalization; that Bennett Kratzer, James K. Singleton, and A. W. Lind are the county justices of Schuyler county, and Frank A. Irwin is the collector of revenue for said county; that Benjamin F. Bourn, Epharim E. Sparks, and Riley Gale are the

justices of the county court of Scotland county, and Henry M. Gorin is the collector of revenue of said county; that Willis M. Boulware, Marcellus L. Chappelle, and James Eagon are the justices of the county court of Clark county, and George S. Stafford is the collector of revenue for said county, and that as such officers it is the duty of the said county court justices, acting as the county courts of their respective counties, to cause to be extended on the tax books of their respective counties all taxes lawfully assessed upon the property in their said counties respectively, and that it is the official duty of the said collectors of revenue in the said several and respective counties to collect the taxes so legally extended upon said tax books in their respective counties when the same, properly extended and certified, is placed in their hands for collection; and as a means of enforcing such collection the said collectors are authorized by law to seize and sell the personal property of such persons whose taxes have become delinquent or to employ counsel and cause suits to be brought to enforce such collections against the real estate of such delinquent tax-payers, or the said taxes of railroad corporations delinquent under the law may be collected by civil action in the name of the State in any court of competent jurisdiction in the State whenever the State auditor or county court may adjudge it necessary and so ordered by the county court of the county in which the same are collectable.

But your orators say that by reason of the matters herein
40 stated the said auditor had no authority or warrant in law to certify to the said several county courts of the counties of Schuyler, Scotland, and Clark any taxes against the said Missouri, Iowa and Nebraska Railway Company; nor had the county courts of said counties any warrant or authority in law to assess said taxes against said railway company or its property or to cause the same to be placed and extended upon the tax books of their said several and respective counties; nor have the collectors of said counties any warrant or authority in law to enforce or attempt to enforce the collection of such taxes.

But now so it is, may it please the honorable court, that, as your orators are advised and informed and as they believe and so state the facts to be, the above-named defendants, the said auditor of the State of Missouri and the said several members of the said several and respective county courts and the said several collectors of revenue in and for the said several and respective counties, combining and confederating with divers other persons, to your orators at present unknown, but whose names, when discovered, they pray the liberty of inserting, with apt words to charge them as parties defendant herein, and contriving how to injure your orators and other stockholders in said company, are going about to cause the said Missouri, Iowa and Nebraska Railway Company to pay taxes in the said several counties aforesaid, notwithstanding the exemption in their said charter therefrom.

That, so combining and confederating together to oppress, harass, and injure your orators and other of said stockholders, the said State auditor and the said several and respective county courts and

the said several and respective collectors of revenue of the said several and respective counties have caused the property of
41 the said railway corporation owned and used exclusively in the operation of said road and necessary for such operation in the said several and respective counties to be assessed for taxation, and that the same has been so assessed and certified by the said auditor to the said several and respective county courts of the said several and respective counties for taxation for State, county, school, and municipal purposes, and that they, the above-named officials of the State and said counties, pretending that the said railroad company is in default for former years in the payment of taxes, are prece-ding to cause said delinquent taxes to be assessed up against and collected from the said railway company, contrary to the provisions of its charter and to the decisions of the courts of Missouri thereon.

That the said county court justices in their said several and respective counties have ordered suit to be brought for said supposed delinquent taxes heretofore assessed upon the property of said railway company, and have contracted and intend to contract with attorneys-at-law to institute and maintain suits for such delinquent taxes and for such taxes as have heretofore been assessed and are not yet delinquent but may & will hereafter become delinquent unless said railway company submits to the wrongful oppression of paying the same, and that said defendants have combined and agreed in every way to proceed to enforce the collection of taxes against the property of said railway company, as the said defendants would be entitled to do under the laws of Missouri were said taxes legally assessed and said railway company not exempt therefrom by law.

Your orators say that they are owners of a large interest in all the property of said company; that they purchased their interest therein, paying therefor a large and valuable consideration, relying
42 upon the terms of the said charter and *of* the good faith of the State of Missouri in protecting them in their chartered rights, privileges, and immunities; and they charge and aver that all of the illegal acts, errors, and irregularities aforesaid committed and intended to be committed by the aforesaid public officers are well known to the officers of the said railway company; that your orators have demanded of said railway company, through its said officers and its board of directors, that they should institute the necessary suits or proceedings, either in law or equity, such as were best calculated to protect the interests of your orators and others, the holders of the stock of said company, but that said company, its officers and directors, neglect and refuse to take any steps to protect the interests of your orators and the other holders of said stock; that while the said officers and company insist that said tax is unjust, oppressive, and illegal, they refuse to take the responsibility of contesting the same in the courts of proper jurisdiction and have declared their intention not to resist the collection of said taxes, although they well know the same to be destructive of the franchises

of said company and that if enforced will wholly destroy and annul the value of the stock so held and owned by your orators.

Wherefore, inasmuch as your orators and those whom they represent are without adequate remedy at law and for the purpose of preventing a multiplicity of suits and irreparable injury to said company and to your orators, and that exact justice may be done in the premises, your orators pray your honors to take cognizance of this suit and of the matters of complaint herein stated and to declare by a decree of this court the action of the board of equalization in assessing the property of the said Missouri, Iowa and Nebraska Railway Company illegal;

To declare the acts of the said auditor and the officers of
43 said counties to be void and of no effect in law or in equity, and that the taxes charged and levied or to be hereafter charged and levied against said company and property on said assessment to be illegal and void, whether for State, county, school, or municipal or any other purpose; and that your honors may grant to your orators a writ of injunction issuing out of and under the seal of this honorable court, to be directed to the defendants hereinafter mentioned, to restrain them, and each of them and all others acting for or under them, as well as all persons claiming any right under said assessment, from instituting any suits or in any other manner proceeding to collect said taxes or any part thereof and restraining the said railroad company from paying said taxes or any part thereof; and that your honors grant unto your orators a temporary writ of injunction restraining and enjoining the said defendants as above prayed, and that on final hearing the said injunction be made perpetual by the decree of this court; and that they may have such other and further relief as in equity and good conscience they are entitled to.

And to the end that complete justice may be done your orators pray that a writ of subpœna may be issued in the manner aforesaid, directed to the defendants herein named, to wit:

Thomas Halladay, State auditor of the State of Missouri; The County of Schuyler, in the State of Missouri; The County Court of said Schuyler County; Bennett Kratzer, James K. Singleton, and A. W. Lind, justices of the county court of said Schuyler county; Frank A. Irwin, collector of revenues in and for said Schuyler county; The County of Scotland, in the State of Missouri; The County Court of said Scotland County; Benjamin F. Bourn, Epharim E. Sparks, and Riley Gale, justices of the county court of said Scotland county; Henry M. Gorin, collector of revenue
44 in and for said Scotland county; Clark County, in the State of Missouri; The County Court of said Clark County; Willis M. Boulware, Marcellus L. Chappelle, and James Eagon, justices of the county court; and George S. Stafford, collector of revenue in and for said Clark county, Missouri; and The Missouri, Iowa and Nebraska Railway Company. Each of the public officers above named as defendants are citizens and residents of the State of Missouri.

And, as in duty bound, your orators will ever pray.

A. J. BAKER AND F. T. HUGHES,
Solicitors for Complainants.

UNITED STATES OF AMERICA,
Eastern District of Missouri.

Andrew J. Baker, being duly sworn, says that he — one of the solicitors for complainants in the above-amended bill, and that as such he is well acquainted with the facts therein stated; that said bill is true in so far as the same is stated of his own knowledge, and that of those matters stated on information and belief he has reason to believe them to be true and does so believe them to be true.

ANDREW J. BAKER.

Subscribed & sworn to before me this 7th January, 1880.

A. P. SELBY,
U. S. Com'r, East. Dist. Mo.

And afterwards, to wit, on the twenty-eighth day of January, A. D. 1880, the following further proceedings were had and appear of record in said cause, to wit:

(*Motion for Attachment Filed.*)

45 CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

This day come the complainants, by their solicitors, and file motion for an attachment against defendants for failing to make return to the rule to show cause herein.

And said complainants' solicitors suggest to the court the death of George S. Knox, one of the complainants herein; whereupon, on motion of said solicitors, it is ordered that this suit, so far as the same relates to the said George S. Knox, be and the same is revived in the name of William Hill, administrator of the estate of said George S. Knox, deceased.

Said motion is in words and figures following, to wit:

(*Motion for Attachment.*)

CHARLES A. SECOR *et al.*
vs.
JAS. K. SINGLETON *et al.*

Now comes complainants and shows to the court that on Sept. 16th, 1879, they filed their motion in above cause against defendants James K. Singleton, A. W. Lind, and Bennett Kratzer, justices of the Schuyler county court of Missouri, asking that a rule issue against them commanding them to show cause, if any they had, why they should not be attached and punished for contempt in violating the temporary injunction in above cause in this, that after said injunction bill was filed in this court and after motion for temporary injunction was heard said county court judges
46 caused suit to be brought against the Missouri, Iowa and Nebraska Railway Company for taxes, which said suit was prohibited by the temporary injunction aforesaid.

That said defendants appeared by said motion: that the rule was by this court granted and said defendants ordered to show cause on or before the 27th day of November, 1879.

Complainants state that defendants have shown no cause whatever to said rule, and ask that they now be required to file a stipulation in this court within the next ten days to the effect that they will dismiss the said suit so commenced in the Schuyler county circuit court against said railway company, in default of which a writ of attachment issue.

F. T. HUGHES & A. J. BAKER,
For Compl'tns.

And also on said twenty-eighth day of January, A. D. 1880, the following further proceedings were had and appear of record in said cause, to wit:

(*Order on Motion for Attachment.*)

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

Ordered that a writ of attachment issue against the defendants unless they, on or before February 16, 1880, either dismiss or file an agreement to dismiss a suit by them caused to be instituted in the circuit court for Schuyler county against the Missouri, Iowa and Nebraska Railway Company, to enforce the collection of taxes against said company:

47 And afterwards, to wit, on the first day of April, A. D. 1880, there was filed in said cause a demurrer to amended bill in words and figures following, to wit:

(*Demurrer to Amended Bill.*)

In the Circuit Court of the United States for the Eastern District of Mo., March Term, A. D. 1880.

CHARLES A. SECOR, JAMES F. SECOR, JOHN E. WALKER, GEORGE S. KNOX, & CHARLES H. MELLON, Complainants,
vs.
THOMAS HALLIDAY, Auditor of the State of Missouri, *et al.*, Defendants.

Now, at this day, come The Counties of Schuyler, in the State of Mo., Bennett Kratzer, James K. Singleton, and A. W. Lind, judges of the county court of Schuyler, and Frank A. Irwin, collector of the State & county revenue of said county; The County of Clark, in the State of Mo., Willis M. Boulware, Ma-cellus L. Chappell, judges of the county court of Clark county, and George S. Stafford, collector of the State and county revenue of said Clark county, and demur to the amended bill of complaint filed by complainants in this cause, and for cause of demurrer says—

That the facts set forth in said bill of complaint do not show or constitute any cause of action or complaint against these defendants and do not entitle the complainants to the relief prayed for in said bill of complaint.

Wherefore these defendants pray the judgment of the court whether they shall be required to make further answer to said bill of complaint.

48 E. R. McKEE AND W. P. JOHNSON,
Att'ys for Defendants.

And afterwards, to wit, on the twenty-second day of April, A. D. 1880, the following further proceedings were had and appear of record in said cause, to wit:

(*Agreement of the County Court of Schuyler County to Dismiss a Certain Suit Filed.*)

CHARLES A. SECOR *et al.*, Complainants,
vs. } 1505.
JAMES K. SINGLETON *et al.*, Defendants.

Now come the judges of the county court of Schuyler county and file an agreement herein to dismiss a certain suit of said county against the Missouri, Iowa and Nebraska Railway Company, now pending in the Schuyler county circuit court.

Said agreement is in words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Missouri.

In the Circuit Court of the U. S. for the Eastern Dis. of Mo.

CHAS. A. SECOR *et al.*, Pl'ffs,
against
JAMES K. SINGLETON *et al.*, Def'ts.

We, the undersigned, judges of the county court for Schuyler county, Mo., hereby agree to dismiss the suit of Schuyler county against the M., I. & N. R. W. Company, now pending in the
49 Schuyler county circuit court, for the collection of taxes due from said road at the next term of said court.

Witness our hands this Feb. 6th, 1880.

JAMES K. SINGLETON.
BENNET KRATZER.
A. M. LIND.

STATE OF MISSOURI,
County of Schuyler, } *ss*:

I, Daniel D. Smith, clerk of the county court within and for the county of Schuyler, in the State of Missouri, do hereby certify that James K. Singleton, Bennet Kratzer, and A. M. Lind, whose names are subscribed to the above and foregoing instrument of writing, *was*, at the time of so doing, acting justices of the county court in and

for the county aforesaid, duly commissioned and sworn, and that their signatures thereto are genuine.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of office as clerk of the county court for the county aforesaid this 7th day of February, 1880.

DANIEL D. SMITH.
Clerk of County Court.

And afterwards, to wit, on the twenty-fourth day of April, A. D. 1880, there was filed in said cause the separate answer of Thomas Holliday in words and figures following, to wit:

(Separate Answer of Thomas Holliday.)

50 In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR *et al.*, Complainants,
vs.
THOMAS HOLLIDAY, Auditor of the State of Missouri *et al.*, Defendants.

Now, at this day, by his attorneys, comes Thomas Holliday, auditor of the State of Missouri, and for separate answer to the amended bill of complaint filed by complainants *and* says that he denies each and every allegation in the complaint, and, having fully answered, prays the same may be dismissed as to him with costs.

E. R. McKEE & W. P. JOHNSON,
Att'ys for said Def't.

And afterwards, to wit, on the sixth day of December, A. D. 1881, there was filed in said cause a reply to answer of Thomas Holliday in words and figures following, to wit:

(Reply to Answer of Thomas Holliday.)

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES F. SECOR *et al.*
vs.
JAMES K. SINGLETON *et al.*

The replication of Charles F. Secor, James A. Secor, John E. Walker, William Hill, as adm'r of the estate of George Knox, now deceased, and Charles H. Mellen, complainants, to the an-
51 swer of Thomas Hollady, one of the defendants.

These repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the

said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things *this* repliant *is* and will be ready to aver and maintain and prove as this honorable court shall direct, and humbly prays as in and by *its* said bill *it* has already prayed.

A. J. BAKER,
Solicitor for Complainants.

And on said sixth day of December, A. D. 1881, the following further proceedings were had and appear of record in said cause, to wit:

Demurrer to Amended Bill Overruled.

CHARLES A. SECOR *et al.*, Complainants,
vs.
J. K. SINGLETON *et al.*, Defendants. } 1505.

The demurrer of certain defendants to complainants' amended bill having heretofore been submitted on complainants' motion and having been fully considered by the court, and the court
52 being now fully advised in the premises, it is ordered that said demurrer be, and it is hereby, overruled at demurrants' cost.

Death of Complainant George Knox Suggested, &c.

And thereupon plaintiffs, by their solicitors, file replication to the answer of Thomas Holliday. Complainants, by their solicitors, also suggest the death of George Knox, one of the complainants herein, and the appointment of William Hill as administrator of the estate of said Knox; and thereupon, on motion of said solicitors, the said William Hill, administrator aforesaid, is made a co-complainant herein.

Amended Bill Dismissed as to Defendant Holliday; Decree Pro Confesso as to Certain Defendants.

And thereupon, on motion of complainants' solicitors, now filed, said bill is dismissed as to defendant Holliday. And it now appearing to the court that the defendants The County of Scotland, The County Court of Scotland, B. F. Bourne, Riley Gale, and E. E. Sparks, judges of said county court, and H. M. Gorin, collector of Scotland county, have filed no plea or answer to complainants' amended bill herein, it is now, on motion of complainants' solicitors, ordered and decreed that said amended bill be, and it is hereby, taken *pro confesso* as to said defendants; and thereupon leave is granted to demurrants herein to January rules, 1882, to answer.

And afterwards, to wit, on the seventh day of December, A. D. 1881, the following further proceedings were had and appear of record in said cause, to wit:

Decree Pro Confesso Set Aside as to Certain Defendants.

CHARLES A. SECOR *et al.*, Complainants,
vs. } 1505.
JAMES K. SINGLETON *et al.*, Defendants.

On motion of certain respondents herein, by H. A. Cun-
53 ningham, Esquire, their solicitor, it is ordered that the decree *pro confesso* entered herein on December 6, 1881, be, and the same is hereby, set aside; and thereupon, by leave of court, the answer of all the respondents herein, except defendants Holliday and The Missouri, Iowa and Nebraska Railway Company, to complainants' amended bill is now filed.

Said answer is in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR, JAMES F. SECOR, and Others, Complainants,
vs.
THOMAS HOLLIDAY, Auditor of Mo.; THE COUNTY OF SCHUYLER, and Others, Defendants.

All the respondents (except the Missouri, Iowa and Nebraska Railway Company and Thomas Holliday), by their attorneys, come, and for their joint and separate answer to the amended bill of complaint filed in this cause answer and say—

That they deny each and every allegation in said amended bill of complaint not hereinafter admitted.

1st. These respondents admit that an act entitled "An act to incorporate the Alexandria and Bloomfield Railroad Company" was passed by the General Assembly of the State of Missouri and approved Feb. 9, 1857; but they deny that by said act the said Alexandria and Bloomfield Railroad Company became and was duly and legally incorporated under the laws of the State of Missouri; on the contrary, those respondents allege and charge the
54 truth to be that under the provisions of said act of the General Assembly James Cowgill, Robert E. Hill, Wm. C. Young, A. Maxwell, De Kalb Musgrave, Robert McKee, Thomas C. Rutherford, Francis Smith, Sam. James Fletcher, Willis Curd, Joseph I. Benning, and Reynolds Bane, of the county of Clark, and all such persons as may thereafter become stockholders in said company were incorporated under the laws and authorized to organize as an incorporated company; but these respondents are informed and believe and so charge the fact to be that said James Cowgill, Robert E. Hill, Wm. C. Young, A. Maxwell, De Kalb Musgrave, Robert McKee, Thomas C. Rutherford, Francis Smith, Sam. James Fletcher,

Willis Curd, Joseph I. Benning, and Reynolds Bane never did organize a corporation known as "The Alexandria and Bloomfield Railroad Company" under said act of the General Assembly of the State of Missouri, nor did they, with others, assist in any such organization; and these respondents deny that any organization was made of such company, and require full proof of all allegations in said amended bill of complaint in relation thereto.

2. These respondents say it is not true and deny that on the 13th day of September, 1864, or at any other time, a company known as the Alexandria and Bloomfield Railroad Company was organized under the provisions of the act of the General Assembly aforesaid, or that any such company commenced the transaction of any corporate business.

3. These respondents admit that the printed acts of the General Assembly of the State of Missouri for a session thereof began and held on the 1st day of November, 1865, contain an act which appears as approved on the 19th day of February, 1866, entitled "An act to amend an act entitled 'An act to incorporate the Alexandria and Bloomfield Railroad Company,'" approved Feb. 9th,
55 1857, with additional title by which the Alexandria and Bloomfield Railroad Company was authorized to change its corporate name to that of the Alexandria and Nebraska City railroad; but these respondents are advised and believe and so aver the fact to be that said act which appears as approved 19th Feb., 1866, never was passed by the two houses of the General Assembly of the State of Missouri in the manner provided and required by the constitution of said State of Missouri then in force and which took effect on the 4th day of July, 1865, and for that reason said act was and is void and of no force, and these defendants deny the passage of any such law.

These respondents, further answering, say that as to whether, in pursuance of said supposed authority claimed to be conferred by the act of the 19th of Feb., 1866, aforesaid, the name of the so-called and so-claimed Alexandria and Bloomfield Railroad Company was thereafter changed, designated, and known as the Alexandria and Nebraska City railroad these respondents have no sufficient knowledge or information to form a belief, and deny the same.

4. That as to the allegation that thereafter, under or by authority of the laws of the respective States of Missouri and Iowa, the said Alexandria and Nebraska City railroad was consolidated with the Iowa Southern Railway Company, a corporation in the State of Iowa, or whether from that time forth the said corporation has been known as or is the Missouri, Iowa and Nebraska Railway Company, or whether any consolidated corporation took said name at the date of any supposed consolidation, these respondents have no knowledge or information to form a belief; but these respondents deny that, under and by virtue of any laws of Missouri and Iowa or under the laws of either of them, the said so-called consolidated cor-
56 poration became or is vested with any rights, privileges, or immunities of the original constituent corporations in said States of Missouri and Iowa; but these respondents state that if

such consolidations were had and said companies were merged or attempted to be merged into one the Missouri, Iowa and Nebraska Railway Company so formed became a new company, existing under any by virtue of the general laws of the State of Missouri, and is not entitled to the immunity of exemption from taxation upon its stock given by the charter granted authorizing the organization of the Alexandria and Bloomfield Railroad Company (which company never was organized); but the company formed by such so-called consolidation was strictly a new company and subject to all the laws in force in this State at the time of its formation, and is subject to taxation.

5. These respondents admit that by the provisions of the 9th section of the charter of the Alexandria and Bloomfield Railroad Company, approved Feb. 9th, 1857, that the stock of said company was exempted from taxation for the period of twenty years after its completion; but these respondents allege and charge the fact that no company was ever organized or had legal existence under said charter, and that, while it may be admitted there has been a so-called railroad company in this State called by that name and known by that name, it never was organized under that charter, and said so-called company is not entitled to any rights, privileges, or immunities which would have accrued to a company organized in accordance with and under the provisions of said act of the General Assembly approved the 9th day of Feb., 1857.

These respondents allege and charge that even if the so-called Alexandria and Bloomfield Railroad Company had been duly organized under the act of the General Assembly aforesaid, approved 9th Feb., 1857, and that by virtue of said act its stock was
57 exempt from taxation, and that the Mo., Iowa and Nebraska Railway Co. was its legal successor and as such entitled to all its rights and immunities under said act, but that even then the road-bed and rolling stock, depots, round-houses, and all other property, real and personal, belonging to said railway company would have been and is subject to taxation, as by virtue of the constitution of Missouri the General Assembly is authorized and required to levy taxes upon all property in the State subject to taxation in proportion to its value, and by virtue of the 5 section of article 10 of the constitution of Missouri all railroads in the State or doing business therein shall be subject to taxation for county, State, school, municipal, and other purposes on the real and personal property owned or used by them, and on their gross earnings, their net earnings, their franchises, and their capital stock, and, as it is the property of this so-called corporation that a tax is levied on, it is not only right, just, *fare*, and equitable, but it is in exact accord with not only the spirit of the constitution, but in harmony with the very letter of the fundamental law of the land.

These respondents admit that the said railway has not been completed twenty years, but deny that that provision has any bearing upon the case under consideration.

These respondents further *and* allege and charge that by the provisions of the charter or act of the General Assembly approved 9th

Feb., 1857, under which complainants claim the Mo., Iowa & Neb. Railway Co. are now acting, no authority was given or pretended to be given to construct a railroad in Scotland or Schuyler county; but had a company been organized under said charter it would have had no authority outside of the county of Clark, in the
58 State of Mo., and that under no circumstances can these complainants set up any claim to exemption from taxation in said Counties of Scotland & Schuyler, defendants herein.

These respondents, further answering, say that in relation to the case of Scotland County against The Missouri, Iowa and Nebraska Railway Company, referred to in the bill of complaint and reported in vol. 65 Mo. Reports, pages 123 to 128, inclusive, that such case can have no bearing on the trial of this cause and cannot be referred to as authority in this case for the reason that both the circuit court and supreme court passed upon an agreed statement of facts made up by parties in that particular case and embracing a statement of facts wholly different in many respects from the issues to be tried in this case, matters and things being admitted in that case, and which had by the courts to be taken as true, which in truth were not true, and which, upon the trial of this case, will appear ought not to have been conceded by the plaintiff in said cause, and, further, that all said admissions and concessions were good in that case only, and which said admissions and concessions these respondents utterly ignore in this case and claim a fair trial upon all the issues made by the pleadings in this case.

W. P. JOHNSON &
HENRY A. CUNNINGHAM,

Solicitors for Respondents Benj. F. Bourne, E. E. Sparks, and Riley Gale, Justices of the County Court of Scotland County, and for Scotland County, in the State of Missouri, and for Henry M. Gorin, Collector of State and County Revenue for said Scotland County, and

W. P. JOHNSON,

Solicitor for All the Respondents Named in Answer to Amended Complaint.

And afterwards, to wit, on the thirtieth day of December,
59 A. D. 1881, the following further proceedings were had and appear of record in said cause, to wit:

(*Amendment to Bill Filed.*)

CHARLES A. SECOR *et al.*, Complainants,
vs. } 1505.
JAMES K. SINGLETON *et al.*, Defendants.

On motion of complainants, by their solicitors, this day made at chambers, leave is herewith granted said complainants to file an amendment to their bill, at their own cost, on or before January 3, 1882; and thereupon said complainants, by their solicitors, file said

amendment to bill, with leave to defendants to plead thereto on or before February rules, 1882.

Said amendment to bill is in words and figures following, to wit:

(Amendment to Bill.)

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR *et als.*
vs.
JAMES K. SINGLETON *et als.*

Charles A. Secor, James F. Secor, John E. Walker, Charles H. Mellen, and William Hill, administrator of the estate of George Knox, *defendants* plaintiffs in the above-entitled cause, by leave of court present this their amendment to their bill in equity against

The County Court of Schuyler County, in the State of Mis-
60 souri; Bennett Kratzer, James K. Singleton, and A. W. Lind, judges of the county court of said Schuyler county; Frank A. Irwin, collector of State and county revenue for said Schuyler county; The County of Scotland, in the State of Missouri; Benjamin F. Bourn, Epharim E. Sparks, and Riley Gale, judges of said county court of Scotland county, Missouri; Henry M. Gorin, collector of State and county revenue for said Scotland county; The County of Clarke, in the State of Missouri; Willis M. Bulware, Marcellus L. Chappelle, and James Egan, judges of the county court of said Clark county, and George S. Stafford, collector of State and county revenue for said Clark county, and The Missouri, Iowa and Nebraska Railway Co., defendants.

And, humbly complaining, your orators show—

1st. That the said defendants, combining to cheat, injure, and defraud your petitioners, do at times pretend that the said act of Feb'y 9th, 1857, entitled An act to incorporate the Alexandria and Bloomfield Railroad Co., was not, in fact, a charter of incorporation incorporating said railroad company, but that it was an act authorizing the persons therein named and all the persons as thereafter might become stockholders to organize a corporation, and falsely pretending and claiming that the persons so named in said act did not organize a corporation known as the Alexandria and Bloomfield Railroad Company nor assist in such organization, and that by reason thereof your orators are not entitled to the relief demanded in their original and amended bills of equity in this cause.

Wherefore your orators, herein replying to said false and fraudulent pretences, show unto this honorable court that all such pretenses are false and inequitable.

For your orators show that by said act of the General As-
61 sembly the said persons therein named were "created a body corporate and politic in fact and in name by the name and style of the Alexandria and Bloomfield Railroad Company," and your orators aver, as heretofore averred, that on the 13th day of

September, 1864, the said corporation was organized for the transacting of its proper corporate business.

2nd. They, the said defendants, at other times pretend that a majority of the persons named in said act of incorporation never accepted said charter and organized for the transaction of business under its provisions, and that therefore and by reason thereof your orators are not entitled to the relief demanded.

Wherefore your orator-, replying unto such false and fraudulent pretences, show unto this honorable court that all such pretenses are false and inequitable, and that the defendants are estopped from having and maintaining any such defense to your orators' claim for relief. In support whereof your orators show unto the honorable court the following:

That the legal existence of said corporation has been acknowledged and acquiesced in for a long series of years by all of said parties defendant and by the various departments, legislative and judicial, of the State of Missouri and of the United States, in this:

1st. The said county of Clark, in its corporate capacity, under the provisions of said charter, by its county court, did, in the year 1864 and after September 13th of said year, subscribe to and take stock in said Alexandria and Bloomfield Railroad Company, and did on the 1st day of January, 1865, issue its bonds in payment of said stock so subscribed, and said subscription of stock was held and adjudged to be legal and valid by the circuit court of Missouri for Lewis county and by the supreme court of the State of
62 Missouri in the case of Smith and Hall *vs.* Clark County, reported in the 54 Mo. Reports, at page- 58 to 82, whereby the said county of Clark and the said courts of the State of Missouri recognized the organization and legal existence of said corporation.

And your orator- charges that said county of Clark accepted, owned, and held the stock so subscribed for and received the benefits and emoluments accruing therefrom.

2nd. The said county of Scotland, in its corporate capacity, under the provisions of said charter, by its county court, did on the 1st day of Sept., 1870, subscribe to and take stock in the said Missouri, Iowa and Nebraska Railway Company's corporation, created by the consolidation of the Alexandria and Nebraska City railroad with the Iowa Southern Railway Co., as fully set out in plaintiffs' former amended bill, and issued its bonds in payment thereof, and that said subscription was held valid and binding by this honorable court and by the Supreme Court of the United States in the case of County of Scotland *vs.* Thomas, reported in 94 U. S. Supreme Court Reports, at page 682; and the said county of Scotland accepted and held the stock so subscribed for and received the benefits and emoluments accruing therefrom.

3d. The said county of Schuyler in like manner subscribed to the stock of the said Missouri, Iowa and Nebraska Railway Company, and issued its bonds in payment therefor on the 1st day of September, A. D. 1871, which said subscription was held to be legal

and binding upon said county by this honorable court and by the Supreme Court of the United States in the case of Schuyler County *vs.* Thomas, reported in 98th U. S. Supreme Court Reports, page 169; and the said Schuyler county accepted and held the stock so subscribed and received the benefits and emoluments accruing therefrom.

63 And your orators say that in the case referred to in the amended bill, to wit, the case of Scotland County *vs.* The Missouri, Iowa and Nebraska Railway Company, 65 Mo., page 123, the circuit and supreme court of the State of Missouri recognizes and establishes the validity of the organization and existence of the said Alexandria and Bloomfield Railroad Company as a corporation existing under said charter, and that said fact is admitted solemnly by the said defendant Scotland County.

4. Your orators further show that by the act of Feb'y 19th, 1866, referred to in the amended bill, the legislative department of the State of Missouri recognized and acquiesced in the legal organization and existence of the Alexandria and Bloomfield Railroad Company under the charter of Feb'y 9th, 1857.

Wherefore plaintiffs aver that if there were any irregularities in the primary organization of said corporation that its existence has been legalized and established by sufferance and by the repeated recognitions of such existence by the departments of the State, legislative and judicial, and by the judicial decisions of the courts of the United States, and by the acts of recognition upon the part of the defendants in this cause, and that therefore the said defendants are barred and estopped in equity from setting up, having, or maintaining any such excuses or pretenses as a defense to the relief prayed in plaintiffs' bill.

Wherefore your orators ask that the relief heretofore prayed for may be granted unto them, and for all further and proper relief such as in equity and good conscience they may be entitled to.

A. J. BAKER,
Solicitor for Pl'ffs.

F. T. HUGHES, *Counsel.*

64 UNITED STATES OF AMERICA, }
Eastern District of Missouri, } *ss:*

Andrew J. Baker, being duly sworn, says that he is the solicitor for plaintiffs in this cause, and as such is well acquainted with the facts therein stated; that the said — are true in so far as the same *is* stated of his own knowledge, and that those matters stated on information and belief he believes to be true.

ANDREW J. BAKER.

Subscribed & sworn to before me this 30th day of December, 1881.

A. P. SELBY,
U. S. Commissioner.

And afterwards, to wit, on the twenty-fourth day of January, A. D. 1882, there was filed in said cause a motion to strike out amendment to bill of complaint in words and figures following, to wit:

(*Motion to Strike out Amendment to Bill of Complaint.*)

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Respondents.

All of the respondents (except Thomas Holliday and the Missouri, Iowa and Nebraska Railway Company), by their solicitors, come and move the court to strike out a paper filed in this cause
65 on the 30th day of December, 1881, and called an amendment to the original bill first filed by complainants for the following reasons, to wit:

1. Because it purports to be filed as an amendment to the original bill and not as a complete pleading in itself, superseding the original bill of complaint.
2. Because, although called an amendment to the original bill of complaint, an attempt is made to reply to matters set up in the answer filed by these respondents.
3. Because it fails in form and substance to conform to any pleading known to the law.
4. Because it contains irrelevant matter.
5. Because it is vague and uncertain.

WALDO P. JOHNSON,
H. A. CUNNINGHAM,
Solicitors for Respondents.

And afterwards, to wit, on the thirtieth day of March, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

(*Motion to Strike Out Amendment to Bill Overruled.*)

CHARLES A. SECOR *et al.*, Plaintiffs,
vs.
J. K. SINGLETON *et al.*, Defendants. } 1505.

Now come the parties, by their solicitors, and submit to the court the motion of defendants to strike from the files plaintiffs' amendment to the bill herein; and the court, having fully considered the same, orders that said motion be, and it is, overruled.
66 And thereupon leave is given defendants to May rules to plead to said bill as amended.

And afterwards, to wit, on the tenth day of May, A. D. 1882, the following further proceedings were had and appear of record in said cause, to wit:

(*Final Decree.*)

CHARLES A. SECOR, JAMES F. SECOR, JOHN E. WALKER, William Hill, Administrator of the Estate of George Knox, Deceased, and Charles H. Mellon, Plaintiffs,

against

JAMES K. SINGLETON, BENNETT KRATZER, S. B. LIND, Judges of the County Court of Schuyler County, Missouri; The County of Schuyler, The County Court of Schuyler County, The Collector of Revenue for Schuyler County; Benjamin F. Bourn, Riley Gale, and Ephraim E. Sparks, Judges of the County Court of Scotland County, Missouri; The County of Scotland, The County Court of Scotland County, and The Collector of Revenue for Scotland County, Missouri; Willis M. Bolware, Marcellus L. Chappell, and John Stafford, Judges of the County Court of Clark County, Missouri; The County of Clark, The County Court of Clark County, Missouri; The Collector of Revenue for Clark County, Missouri, and The Missouri, Iowa and Nebraska Railway Company, Defendants. } 1505.

Now, at this day, this cause coming up to be heard upon the plaintiffs' motion for a decree *pro confesso* and final decree, and it appearing to the court that the above-named defendants have failed
67 to plead to or answer the plaintiffs' amended bill in equity and are in default, it is ordered and adjudged by the court that the said defendants and each of them are in default, and it is decreed that said bill in equity be taken as true *pro* confession.

Whereupon said cause coming on for final hearing, and the court, being fully advised in the premises, doth find that the allegations of said bill in equity are true and that the plaintiff is entitled to the relief therein prayed.

Wherefore it is ordered and adjudged by the court that the plaintiffs recover of and from the defendants, except the Missouri, Iowa and Nebraska Railway Company, the sum of one dollar as damages and the costs to be taxed in this cause, and that they have execution therefor.

It is further ordered and decreed that the said defendants, the said several counties of Clark, Scotland, and Schuyler, in the State of Missouri; the said several county courts of said counties, respectively, and the said several named judges of said several and respective county courts, and the said several and respective collectors of said several and respective counties, by themselves, their officers or agents, or their said several and respective successors in office, be, and they are hereby, perpetually enjoined and restrained from levying or attempting to levy, collecting or in any manner attempting to collect from or of the said Missouri, Iowa and Nebraska Railway Company any taxes whatever, State, county, school or municipal, of whatever kind or character, until the expiration of the exemp-

tion ...nited in the charter of said railway company, to wit, Decem... 1st, 1892, and that the said Missouri, Iowa and Nebraska Railway Company, by its officers, agents, or employees, be, and are, also perpetually enjoined from paying any such tax as have or that may be levied for years prior to the said first of December,
68 1892, and that a writ of perpetual injunction issue in accordance with this decree.

And afterwards, to wit, on the fifteenth day of March, A. D. 1888, there was filed in said cause an information to show cause in words and figures following, to wit:

(*Information to Show Cause.*)

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAS. H. SINGLETON *et al.*, Defendants.

Information against certain of the defendants for violation of the perpetual decree of injunction entered in this cause.

Now come the complainants in the above cause and would respectfully inform the court that in violation of the decree herein that one William Y. Wyne, a collector of revenue of the county of Scotland and State of Missouri, has proceeded by suit to enforce the State and county taxes levied against the Missouri, Iowa & Nebraska Railway Company's property, to wit, its road-bed and appurtenances, situate in the county of Scotland and State aforesaid, for the year 1885, and has likewise instituted and is now endeavoring to enforce taxes against the same property for the year 1886.

69 That R. M. Thomson, J. E. Billups, and W. W. Buford are now the county judges of the said county of Scotland, and as such judges did for said years 1885 and 1886 assess and levy against the said railroad in said county State, county, and municipal taxes for the said years 1885 and 1886, and that said county judges of said county have been since on or about the first day of January, 1887, appropriating the funds of said county to aid in the prosecution of said suits to collect said taxes for said years 1885 and 1886 as aforesaid, and have been since said date, through their attorneys and agents, endeavoring to collect said taxes in violation of said decree.

Wherefore complainants pray that citation may issue against the said collector and said county judges, requiring them upon a day certain to show cause, if any, why they should not be committed for a contempt of the decree herein, and for such other and further orders as to the court may seem just and proper in the premises.

CHAS. A. SECOR *et al.*,
Complainants,
By H. S. PRIEST,
GEO. S. GROVER,
Solicitors.

STATE OF MISSOURI, } ss:
City of St. Louis, }

George S. Grover, of lawful age, being duly sworn, on his oath states that he is of counsel for complainants in the within and foregoing information; that he has read the same and is well acquainted with the facts therein stated, and that said facts as set forth in said information are true, as he verily believes.

GEO. S. GROVER.

Subscribed and sworn to before me this 15th day of March, 1888.

70 A. P. SELBY,
Clerk of the Cir. C't of the U. S. for the Eastern Div. of the Eastern Dis. of Mo.

And afterwards, to wit, on the sixteenth day of March, A. D. 1888, the following further proceedings were had and appear of record in said cause, to wit:

(Order to Show Cause.)

CHARLES A. SECOR *et al.*, Complainants, }
vs. } 1505.
JAMES K. SINGLETON *et al.*, Defendants. }

Now come the complainants in the above cause and show to the court, by information, verified by affidavit, that one William Y. Wyne, heretofore collector of revenue of the county of Scotland and State of Missouri, has proceeded by suit to enforce the State and county taxes levied against the Missouri, Iowa & Nebraska Railway Company's property, to wit, its road-bed and appurtenances; situate in the county of Scotland and State aforesaid, for the year 1885, and has likewise instituted and is now endeavoring to enforce payment of taxes against the same property for the year 1886.

That R. M. Thomson, J. E. Billups, and W. W. Buford are now the county judges of the said county of Scotland, and as such judges did for said years 1885 and 1886 assess and levy against the said railroad in said county State, county, and municipal taxes for the said years 1885 and 1886; and said complainants furthermore show that by the final decree entered herein on the tenth day of May, A. D. 1882, the then judges of the county court of Scotland
71 county, Missouri, and the then collector of the revenue of said county of Scotland and their several successors in office were enjoined and restrained from assessing, levying, collecting, or attempting to collect taxes upon said property for said years, and that the action of said William Y. Wyne, R. M. Thomson, J. E. Billups, and W. W. Buford is in violation of said decree and in contempt of the orders of this court.

Wherefore, on motion of complainants, it is ordered that said William Y. Wyne, R. M. Thomson, J. E. Billups, and W. W. Buford be, and they are hereby, required to show cause, if any they have,

on Monday, March 26th, A. D. 1888, why they should not be adjudged guilty of contempt of said decree and punished accordingly.

It is further ordered that a certified copy of this order be served upon said William Y. Wyne, R. M. Thomson, J. E. Billups, and W. W. Buford and each of them by the marshal of this district.

Upon a duly certified copy of the said order appears the following return of the marshal, to wit:

(*Marshal's Return.*)

UNITED STATES OF AMERICA, } ss:
Eastern Division of the Eastern Judicial District of Missouri, }

I hereby certify that I have executed this writ on the 19th day of March, A. D. 1888, by delivering a certified copy thereof, together with a copy of the petition thereto attached as furnished by the clerk, to each of the within-named R. M. Thomson, J. E. Billups, and W. W. Buford, county judges of Scotland county, Missouri.

Served at the town of Memphis, in Scotland county, Mo., in the eastern district of Missouri.

72

Further executed this writ on the 20th day of March, A. D. 1888, by delivering a copy thereof, together with a copy of the petition thereto attached as furnished by the clerk, to the within-named William Y. Wyne.

Served at the town of Philadelphia, Marion county, Mo., in the eastern district of Missouri.

JOHN W. EMERSON,
U. S. Marshal,
By CHARLES McCUNE, *Deputy.*

Marshal's fees:

4 services	$8 00
749 miles traveled	44 94
	$52 94

And afterwards, to wit, on the twenty-sixth day of March, A. D. 1888, the following further proceedings were had and appear of record in said cause, to wit:

(*Time for Answering Citation Extended.*)

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

Ordered that the time for answering the citation for contempt be extended until the first Monday in May on condition that in the meantime no further action be taken looking to the prosecution of any of the suits pending for the collection of taxes and with liberty to informant, if such action is taken, to call this matter up for such further action as may be found necessary.

And afterwards, to wit, on the seventh day of May, A. D.
73 1888, there was filed in said cause a return to order to show cause in words and figures following, to wit:

(Return to Order to Show Cause.)

In the Circuit Court of the United States for the Eastern District of Missouri, Eastern Division.

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES H. SINGLETON *et al.*, Defendants. } In Equity.

The answer of R. M Thompson, J. E. Billups, and W. W. Buford and Wm. Y. Wyne to a rule awarded against them by this honorable court.

To the honorable judges of the circuit court of the United States for the district aforesaid:

By an order entered in the cause aforesaid R. M. Thompson and others were summoned to show cause why they should not be punished for contempt for disobeying the injunction heretofore decreed in the above cause. These respondents, answering, say that they did not nor did either or any of them assess or levy against the Missouri, Iowa and Nebraska Railway Company's property or any of it in the county of Scotland and State of Missouri, for the year 1885 and 1886 or either of them, any taxes whatever, nor have they nor either of them been appropriating the funds of said county since the first day of January, 1887, to aid in the prosecution of any suits. The only moneys respondents Thompson, Billups, and Buford have ever appropriated for any purpose in connection with said suits was a certain sum to be deposited as security for costs in an inter-
74 vention of the State of Missouri in a cause depending in the circuit court of the United States for the southern district of Iowa wherein The Farmers' Loan and Trust Company was complainant and The Missouri, Iowa and Nebraska Railway Company and others were defendants; that the Keokuk and Western Railroad Company appeared and answered said intervention and submitted itself to the jurisdiction of said court without objection and was defending against said intervention and moved that a sum of money for security for costs be required by the court to be deposited in the said cause; that an order was made by the said court, at the instance and upon the motion of the Keokuk & Western R. R. Co., requiring security to be so deposited, and not in their individual capacity or in their own right, but as the county court of Scotland county, these respondents, Thompson, Billups, & Buford, furnished the said sum of money for deposit as aforesaid. At that time these respondents had no notice or information of the decree of injunction in the above-entitled cause. The Missouri, Iowa and Nebraska Railway — has not now nor did it have at the time of filing the information herein for contempt any property, rights, or

credits of any sort whatsoever, and neither it nor its former stockholders have or then had any right, title, or interest in or to any of the property upon which the taxes for which said intervention was filed were levied, and the said Missouri, Iowa and Nebraska Railway Company is wholly and utterly insolvent and has for many years ceased to do any business whatever and has been dissolved and has ceased to exist as a corporation, and the complainants have no longer any interest in any of the matters stated in the said information and have no right to institute or prosecute this proceeding for contempt.

The suits mentioned in the said information were suits in the name of and by the authority of and for the benefit of the
75 State of Missouri, and these respondents have no interest therein whatsoever as individuals, and their action as officers has been such only as was required by the laws of the State of Missouri, and these respondents submit that this court in and by its said injunction had no intention to enjoin the State of Missouri or the bringing and prosecuting of any suits in its name, by its authority, and for its benefit, and that this court had no jurisdiction so to do; and this respondent, William Y. Wyne, says that in instituting the suit in the circuit court for Scotland county, Missouri, for the taxes of 1886, and the intervention in the U. S. court for the southern district of Iowa aforesaid he acted under the direct command of a statute of the State of Missouri, and that said proceedings were instituted in the name, by the authority, and for the benefit of the State of Missouri, and that he has no individual interest in the matter whatsoever, but was simply acting as an officer of the said State and for its benefit. At the time of instituting the said proceedings he had no notice or knowledge or information of the injunction in the above-entitled cause, and all the respondents disclaim any intention or disposition to treat the court or its orders with disrespect, and state that they have been actuated alone with a desire to perform their official duties and to have the law properly administered, and they humbly pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

ROB'T M. THOMSON.
JOSEPH E. BILLUPS.
W. W. BUFORD.

STATE OF MISSOURI, }
Scotland County, } ss:

Before me personally appeared R. M. Thompson, J. E. Billups, and W. W. Buford, and whose names are subscribed to the foregoing answer, and each made oath before me and in my presence
76 that the statements therein contained are true.

May 5, 1888.

[SEAL.]

JAMES P. NESBIT,
Clerk County Court.

And on said seventh day of May, A. D. 1888, the following further proceedings were had and appear of record in said cause, to wit:

(Oral Motion to Adjudge Respondents Guilty of Contempt Heard & Submitted.)

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

Now come the complainants, by their solicitors, and move the court, orally, to adjudge the respondents guilty of contempt, notwithstanding their return filed herein.

And thereupon said motion was argued by counsel and submitted and by the court taken under advisement.

And afterwards, to wit, on the eighteenth day of May, A. D. 1888, the following further proceedings were had and appear of record in said cause, to wit:

(Amendment to the Return to the Order to Show Cause, Filed by Consent.)

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

Now come the respondents and, by consent, file amendment
77 to the return to the order to show cause *nunc pro tunc* as of May 7th, 1888.

Said amendment to the return is in words and figures following, to wit:

(Amendment to Return.)

In the Circuit Court of the United States for the Eastern District of Missouri, Eastern Division.

CHARLES A. SECOR *et al.*, Complainants,
versus
JAMES H. SINGLETON *et al.*, Defendants. } 1505. In Equity.

Amendment to the answer of R. M. Thompson, J. E. Billups, W. W. Buford, and William Y. Wine to a rule awarded against them by this honorable court requiring them to show cause why they should not be punished for contempt of court in disobeying the injunction heretofore decreed in the above-entitled cause.

These respondents, in addition to their answer to said rule heretofore filed herein, answering, further say:

1. That in 1870 the Missouri, Iowa and Nebraska Railway Company made, executed, and delivered to the Farmers' Loan and Trust Company, as trustee, a mortgage upon its entire line of railway and

property to secure the payment of 3,025 bonds of $1,000 each, made, executed, and delivered by it to various persons.

2. Afterwards, December 30, 1879, the said Missouri, Iowa and Nebraska — Company, being in default of payment of in-
78 terest upon said bonds and being unable to pay the said interest to said Farmers' Loan and Trust Company, filed a bill in equity for the foreclosure of said mortgage against the said Missouri, Iowa and Nebraska Railway Company in the circuit court of the United States for the district of Iowa.

3. Afterwards, September 3, 1880, pending the said bill, the said Missouri, Iowa and Nebraska Railway Company made, executed, and delivered to the Wabash, St. Louis and Pacific Railway Company a lease of its entire railway and property, a true copy whereof is hereto attached, marked Exhibit B, and made a part hereof as fully as if set forth at large herein, whereby it leased its entire railway property for the term of ninety-nine years, renewable forever, to the said Wabash, St. Louis and Pacific Railway Company. The said lease was an absolute conveyance of the said property for the said term of ninety-nine years, renewable forever, and contained no provisions of any kind for the forfeiture or termination of said lease prior to the expiration of the term thereof as above stated.

4. Immediately upon the execution of the said lease September 3, 1880, the said Missouri, Iowa and Nebraska Railway Company delivered the said railway and property to the said Wabash, St. Louis and Pacific Railway Company.

5. After the filing of the bill in equity aforesaid by the Farmers' Loan and Trust Company against the Missouri, Iowa and Nebraska Railway Company as aforesaid the Missouri, Iowa and Nebraska Railway Company entered its appearance in the said court to the said bill, and afterwards such proceedings were duly had and taken in the said cause that the said cause duly came on for the final hearing October 22, 1880, and on that day a final decree of fore-
closure was duly made and entered in the said cause by the
79 said court, and said mortgaged property was therein and thereby ordered to be sold.

6. Afterwards, the said district of Iowa having been divided into two districts and several divisions by an act of Congress, the said cause was duly transferred to the circuit court of the United States for the southern district of Iowa, eastern division, and said decree remaining unexecuted, certain complications having arisen, a supplemental bill was filed in the said cause in the said court by the Farmers' Loan and Trust Company against the said Missouri, Iowa and Nebraska Railway Company and also against the said Wabash, St. Louis and Pacific Railway Company and other defendants, and the said Missouri, Iowa and Nebraska R'y Co., Wabash, St. Louis & Pacific R'y Co., and other def'ts to the said supplemental bill duly entered their appearance thereto in said cause, and such proceedings were duly had and taken in the said cause that the said cause came on for final hearing upon the said supplemental bill July 8, 1886, and on that day a supplemental decree of foreclosure was duly made and entered in said cause against the defendants to said supplemental

bill again ordering the sale of all of said property and of all the right, title, and interest of all the said defendants in and to the same by the master in chancery of said court and the application of the proceeds of the said sale upon the said mortgage debt.

And afterwards, August 18, 1886, said sale was duly made by said master, and said property was by him duly sold to M. K. Jesup and H. C. Thacher, and said sale was duly confirmed by the court, and the said master, in accordance with the order and direction of the said court, November 23, 1886, duly made, executed, and delivered to said Jesup and Thacher a good and sufficient deed of conveyance whereby there was conveyed to them all of said prop-
80 erty.

7. And afterwards, November 26, 1886, said Jesup and Thacher duly sold and conveyed all of said property to the Keokuk and Western Railroad Company, a corporation duly created, organized, and existing under the laws of the State of Iowa, whereby the said Keokuk and Western Railroad Company became and ever since has been the owner in fee simple of said property, subject, however, to the taxes hereinafter mentioned.

8. All of said property was by the order of said court in said cause delivered to the Keokuk and Western Railroad Company December 3, 1886, by the receiver, who had, by and under the orders and appointments — said court, been in the possession thereof.

9. From and after the execution and delivery of the said lease by the said Missouri, Iowa and Nebraska Railway Company to the said Wabash, St. Louis and Pacific Railway Company September 3, 1880, and the delivery of all of said property thereunder on the same day to the said Wabash, St. Louis and Pacific Railway Company, the said Missouri, Iowa and Nebraska Railway Company has never owned or possessed any of the said property nor had any present estate therein, and the only right, title, or interest in or to the said property at any time thereafter vested in the said Missouri, Iowa and Nebraska Railway Company was the reversion after the expiration of the term of the said lease.

10. The exemption from taxation set up in the original bill in this case was an exemption of the stock of the Alexandria and Bloomfield Railroad Company contained in section 9 of the charter of the said last-named company. In the decree in this case said exemption was held to have passed to the Missouri, Iowa and Nebraska Railway Company, which was a corporation formed by the consolida-
81 tion of the Alexandria and Bloomfield Railroad Company (or, as it was then called, the Alexandria and Nebraska City Railroad Company) with the Iowa Southern Railway Company, a corporation of the State of Iowa.

The said exemption was held by the said decree to be an exemption of the property of the said Missouri, Iowa and Nebraska Railway Company.

These respondents submit that the said exemption was personal to the said Missouri, Iowa and Nebraska Railway Company, and only exempted property from taxation so long as and in so far as it was and continued to be the property of the said Missouri, Iowa

and Nebraska Railway Co.: that after the execution of the aforesaid — and the delivery of the property thereunder the said property was taxable in the hands of the said Wabash, St. Louis and Pacific Railway Company.

11. The Missouri, Iowa and Nebraska Railway Company has not nor did it have at the time of filing the information herein for contempt nor for a long time prior thereto any property, rights, credits of any sort whatsoever, and it has not now nor did it at said time have any right, title, or interest in and to any of the property upon which the taxes in question have been levied; and the said Missouri, Iowa and Nebraska Railway Company at the time of filing said information and for a long time prior thereto was wholly and utterly insolvent and has and had for many years ceased to do any business whatever and had been dissolved and had ceased to exist as a corporation.

12. The complainants have no longer any interest in any of the matters stated in the said information, and have not now and had not at the time of filing the said information any interest whatsoever in the said railway property or in the question of the taxation
82 thereof or in the matter of collecting taxes thereupon.

13. These respondents did not nor did either or any of them assess or levy against the said railroad property in said county any State, county, or municipal taxes for said years 1885 and 1886, nor were any taxes levied against the Missouri, Iowa and Nebraska Railway Company's property for said years.

14. The county court of Scotland county (but not these defendants or either of them) levied on the said railway property taxes for the years 1885 and 1886 and same were duly extended on the tax books and delivered to the respondent, William Y. Wine, then collector of the revenue for Scotland county.

15. After the taxes for the year 1885 were so levied and extended on the tax book and same delivered to said Wine he, not knowing or having any notice or information of the decree of injunction in this case, March 4, 1886, instituted an intervention in the said suit then pending in the circuit court of the United States for the southern district of Iowa, wherein The Farmers' Loan and Trust Company was complainant and The Missouri, Iowa and Nebraska Railway and others were defendants, in the name and by the authority and for the benefit of the State of Missouri, as was his duty under the statute of the State of Missouri in such cases made and provided, for the said taxes for the year 1885 on the said property, and afterwards the said Keokuk and Western Railroad Company appeared in said cause and submitted itself to the jurisdiction of said court and answered the said intervention. The said intervention remained pending until after the judgment in the action at law in the circuit court of Scotland county, Missouri, hereinafter mentioned, and after said judgment the said Keokuk and Western Railroad Company, by its president and counsel, insisted upon the said intervention
83 being speedily tried, and, without the consent of or consultation with the State of Missouri, intervenor, or its attorneys in said cause, had the same set down for hearing before the master in

chancery, to whom the same had been referred by the order of the said circuit court of the United States, and procured the said master to issue a summons to counsel for the said State of Missouri requiring them to be and appear before the said master at a certain day for the trial of said intervention, and when the said counsel for the said State appeared on said day before the said master for the hearing of said intervention the said Keokuk and Western Railway Company, by its counsel and president, moved that the said intervenor be required to deposit a sum of money, to wit, $250.00, as security for the costs of said intervention, and the said court, at the instance and upon the motion of the said Keokuk and Western Railway Company, required that the said intervenor make such deposit of said sum of money for the purpose aforesaid, and thereupon the said sum of money was deposited in the said court for said purpose by these respondents on behalf of the said State of Missouri.

The said respondents did not at the time of making such deposit know of or have any information or notice of a decree of injunction in this cause; thereupon the said intervention was tried before the master, and the same has not yet been determined.

16. And said Wine, not knowing or having any information or notice of the decree of injunction herein, also duly instituted an action at law for the taxes for the year 1886 on said railroad property against the said Keokuk and Western Railroad Company, in the circuit court of Scotland county, Missouri, in the year 1887, in the name of and by the authority and for the benefit of the State of Missouri, as was his duty under the statute of the said
84 State of Missouri in such case made and provided; and the said Keokuk and Western Railroad Company, without objection, appeared in the said action at law and submitted itself to the jurisdiction of the said circuit court of Scotland county, Missouri, and answered in said action, and such proceedings were duly had and taken in the said suit that the same was tried and a judgment was duly made and entered in said action in said court against the said Keokuk and Western Railroad Company, adjudging and determining that said property was liable to taxation, as by the record thereof in said court remaining will appear, and said judgment still remains in full force and effect and has not been paid, discharged, satisfied, annulled, reversed, or in any manner vacated, and the same is *res adjudicata* of the liability of said property to taxation. Afterwards the said Keokuk and Western Railroad Company took an appeal in the nature of a writ of error from the said judgment to the supreme court of Missouri.

17. And these respondents deny each and every allegation contained in the information herein filed which has not been in this answer specifically admitted. They say that they did not nor did either of them assess or levy against the Missouri, Iowa and Nebraska Railway Company's property any taxes in the years 1885 and 1886, nor have they or either of them been appropriating the funds of said county since the first day of January, 1887, to aid in the prosecution of any suits other than as herein already stated, nor

have they or either of them instituted or proceeded in any suit or suits or proceedings to enforce said taxes otherwise than as herein stated, nor have they made any effort or endeavor to collect taxes other than as herein stated.

18. And these respondents and each of them have in all their acts and doings in the premises been without any intention
85 or inclination to disobey or disregard the decree of injunction of this honorable court or in anywise to show any disregard of this honorable court, but in all things have acted in good faith and with a desire solely to do their duty in the premises.

19. The action at law and intervention hereinbefore mentioned were in the name and by the authority and for the benefit of the State of Missouri, and these respondents have not nor have either or any of them nor have they at any time had any personal interest whatsoever in the said taxes or the collection thereof or in the said action at law or in the said intervention. In all that they have done they have simply acted as officers of the State of Missouri, and their action as such officers has been such only as was required by the statutes of said State in such cases made and provided, and these respondents submit that this court in and by its said decree of injunction had no intent to enjoin the State of Missouri or to enjoin the commencing or the prosecution of any suits in its name, by its authority, and for its benefit, and that this court had no jurisdiction so to do.

And they humbly pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

ROBT M. THOMSON.
JOSEPH E. BILLUPS.
W. W. BUFORD.

STATE OF MISSOURI, } ss:
Scotland County, }

Before me personally appeared R. M. Thompson, J. E. Billups, W. W. Buford, and William Y. Wine, whose names are subscribed to the foregoing amendment, and each made oath before me
86 and in my presence that they have read and fully understand the statements therein contained, and that they are true.

ROBT M. THOMSON.
JOSEPH E. BILLUPS.
W. W. BUFORD.

Subscribed and sworn to before me by Judges R. M. Thomson, J. E. Billups, & W. W. Buford this 16th day of May, A. D. 1888.

[SEAL.] JAMES P. NESBIT, *Clerk.*

Said Exhibit B is in words and figures following, to wit:

EXHIBIT "B."

This indenture of lease, made this 3d day of September, A. D. 1880, by and between the Missouri, Iowa and Nebraska Railway

Company, a consolidated corporation of Iowa and Missouri, of the first part; the Wabash, St. Louis and Pacific Railway Company, a consolidated corporation of Ohio, Indiana, Illinois, and Missouri, of the second part, witnesseth:

The party of the first part, in pursuance of a resolution of its board of directors adopted on the — day of ——, A. D. 1880, and the further authorization of its stockholders thereto, and in consideration of the covenants and agreements on the part of the party of the second part hereinafter contained, does hereby let, demise, and lease unto the party of the second part, its successors and assigns, for the term of ninety-nine years from this date, renewable in like periods forever, at the option of the party of the second part, the railroad of the party of the first part, extending from the Mississippi river at Keokuk, Iowa, westerly through and across
87 the States of Iowa and Missouri to a point on the Missouri river opposite Brownsville, Nebraska, as now owned, constructed, or used or as at any time hereafter the said railroad may be owned, constructed, or used by the said party of the first part, together with all embankments, bridges, turnouts, side tracks, water tanks and fixtures, shops, engine or other houses, turn-tables, engines, cars, machinery, tools, rolling stock, lots, lands, buildings, offices, and all things, real or personal, now owned or used or that may hereafter be owned or used by the said party of the first part in connection with the said railroad and everything appertaining thereto, and all the franchises, powers, privileges, and chartered or other rights of the said party of the first part, so far as the same may be needful or advantageous to the said party of the second part, as lessee of the premises above described: Provided that the rights of the party of the first part to any subscription or promise payable on the completion of any part of its railroad is expressly reserved from the above:

To have and to hold the said demised railway and property, real and personal, and franchises, as above provided, unto the said party of the second part, its successors and assigns, to and for the full end and time of ninety-nine years from and after the date of these presents and any and all renewals thereof forever, at the option of the party of the second part, as above set forth.

And in consideration of the premises the party of the second part hereby covenants that it will maintain and operate the said railroad, fully maintaining the present equipment thereof and any further equipment which may be supplied at the cost of the party of the second part, keeping the said railroad and equipment in good condition and repair for the full term of this lease and of any renewal thereof, and will indemnify and save harmless the said
88 party of the first part from and against all damages and liabilities whatever in connection with the operation of the same, and will keep full and accurate accounts of all its earnings from the same, which shall at all times be open to inspection by the duly constituted agents or committees of the party of the first part.

The party of the second part further covenants that it will, in

each year while said property is held under this lease, set aside from the gross earnings a sum equal to thirty per cent. thereof, and will apply the same as follows:

First. To the payment of all lawful taxes and assessments levied on said property.

Second. To the payment of the interest on the mortgage bonds of the party of the first part under its deed of trust or mortgage dated June 1st, 1870, and the supplementary indenture of March 1st, 1875.

Third. To the party of the first part, on the first days of April and October in each year, the balance of said thirty per cent. accruing from the earnings of said property for six months preceding the first days of March and September in each year.

Fourth. The party of the second part moreover expressly guarantees that the interest paid by it upon the mortgage bonds aforesaid of said first party shall not be less than at the rate of four and one-half per cent. per annum upon the par value of said bonds, which said first party stipulases does not exceed three millions twenty-five thousand dollars.

The interest aforesaid shall be paid at the office or agency of the said second party, in the city of New York, on the first days of April and October in each year until such time as said bonds shall have been retired by foreclosure or exchange, as hereinafter referred
89 to; but in no case shall this or any of the covenants herein be binding on said second party after it shall for any cause other than its own acts be divested of possession under this lease.

It is further mutually declared that this lease is made and accepted in furtherance of an agreement, February 12th, A. D. 1880, by and between the first and second parties hereto and the trustees of the holders of the mortgage bonds of the first party hereto, the rental above stipulated of four and one-half per cent. on said bonds of said first party, which have been issued to the amount of twenty thousand dollars per mile of completed road, being an equivalent for six per cent. on the fifteen thousand dollars per mile of said railroad in bonds of said first party hereafter to be issued in exchange therefor, as in said agreement provided.

It being found impracticable for said first party to complete its railroad as in said agreement provided, the parties above named have procured the incorporation of a railroad company of Iowa, known as the Iowa, Missouri and Nebraska Railroad Company, to build and have a line of railroad from Prairieville, Iowa, to which point the first party's railroad has been completed to and beyond the junction with the railroad of the second party hereto, as specified in said agreement.

The second party hereby covenants that the completion of the railroad of the Iowa, Missouri and Nebraska Railroad Company to such point of junction shall be accepted by it in lieu of the completion of the railroad of the first party hereto, as stipulated for in said agreement, it being mutually stipulated by the parties hereto that — shall continue otherwise in full force and unaffected.

The second party further covenants that in the event that the

Iowa, Missouri and Nebraska railroad above mentioned shall
90 be completed to a junction as aforesaid before the exchange of stock and bonds provided for in said agreement shall be made, then the second party will thereafter pay, in addition to the rental hereinbefore provided for the holders of the bonds and stock of said first party, such sum in lieu of dividends as in and by said agreement it is provided shall be paid.

It is further expressly understood and agreed that the execution and acceptance of this lease shall constitute the second party the successor and assign of the first party as lessee of the Centerville, Moravia and Albia railroad, and as such, having all the rights and obligations of such lessee, the said second party particularly assuming to pay during such time as the Centerville, Moravia and Albia railroad shall remain in its possession and control the interest guaranteed by the first party upon four hundred first-mortgage bonds as part of the consideration for said lease.

The second party covenants that upon the presentation to it by the owner thereof of any receipt from the Farmers' Loan and Trust Company for the said mortgage bonds of the Missouri, Iowa and Nebraska Railroad Company, given by said Farmers' Loan and Trust Company in pursuance of the plan or reorganization of said company whereby the three trustees who signed the said agreement of February 12th, 1880, were appointed, it will endorse upon or attach to said receipt the following:

"The Missouri, Iowa and Nebraska railroad has been leased to the Wabash, St. Louis and Pacific Railway Company upon terms which provide for the exchange of bonds covered by the within certificate at the rate of fifteen thousand dollars six per cent. bonds and five thousand dollars preferred stock of said Wabash, St. Louis
and Pacific Railway Company for every twenty thousand
91 dollars of said bonds, such exchange to be made only after the title of the lessee therein is perfected, as provided for in said agreement.

"Pending the steps necessary to legalize such exchange the Wabash, St. Louis and Pacific Railway Company is to pay to the holder hereof interest at the rate of four and one-half per cent. on the par value of the bonds covered by this certificate.

"Whenever the Iowa, Missouri and Nebraska railroad shall have been constructed and the cars running thereon from Prairieville, Iowa, to a junction with the said Wabash, St. Louis and Pacific railway so that said railway shall have a benefit of a continuous line from Keokuk, Iowa, to the junction aforesaid, then from that date, during its tenure under the said lease, the Wabash, St. Louis and Pacific Railway Company shall pay as further rental such further sum as shall equal the dividends declared by said Wabash, St. Louis and Pacific Railway Company upon such an amount of the preferred stock above referred to as the holder hereof will, by the terms of said lease, be entitled to receive, the interest aforesaid to be paid at the office or agency of said Wabash, St. Louis and Pacific Railway Company, in the city of New York, on the first days of April and October in each year, commencing April 1st, 1881."

The second party further covenants that upon the deposit of certificates for any number of shares of the common stock of the Missouri, Iowa and Nebraska Railway Company by any stockholder with A. L. Hopkins, as trustee, accompanied by a power of attorney to said trustee to hold and vote said stock, the said trustee shall issue to said stockholder a receipt for the same, in pursuance of this agreement, and to the effect that when the party of the second part shall become vested with a complete title to the property of the
92 party of the first part it will issue to said stockholder in exchange for the stock so deposited the common stock of the said Wabash, St. Louis and Pacific Railway Company in the ratio that five thousand dollars of its said stock per mile on the line of the said Missouri, Iowa and Nebraska railway from Keokuk to Prairieville, Iowa (being 148½ miles), shall bear to the total issue of the stock of the party of the first part, and that — meantime if the railroad of the Iowa, Missouri and Nebraska Railroad Company (now in process of construction) shall be completed from Prairieville, Iowa, to a junction with the railway of the Wabash, St. Louis and Pacific Railway Company, so that said company shall enjoy and use a continuous railway from Keokuk, Iowa, to the junction of above named, then from that date until the exchange above mentioned shall be made (so long as in possession under this lease) the said company will pay to the holder of such certificate a sum equivalent to the dividends which said company may declare upon the same amount of common stock.

It is further stipulated and mutually agreed that before entering upon the back of the above-described receipts of the Farmers' Loan and Trust Company for the said Missouri, Iowa and Nebraska bonds the guaranty aforesaid or attaching the certificate of guaranty thereto the said receipts for bonds shall first have stamped or written thereon:

"Subject to an agreement made by the within-named trustee with the Wabash, St. Louis and Pacific Railway Company for a consolidation or lease of the Missouri, Iowa and Nebraska railroad."

In witness whereof the first and second parties above named have caused their seals and signatures to be hereto affixed by their
93 respective presidents and secretaries the day and year above written.

MISSOURI, IOWA AND NEBRASKA RAILROAD COMPANY,
By F. M. DRAKE, *President.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY,
By SOLON HUMPHREYS, *President.*

And afterwards, to wit, on the twenty-fourth day of May, A. D. 1888, the following further proceedings were had and appear of record in said cause, to wit:

(*Motion to Adjudge Respondents Guilty of Contempt Denied.*)

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

In matter of citation against R. M. Thompson, J. E. Billups, W. W. Buford, and William Y. Wyne to show cause why they should not be punished for contempt.

The oral motion of complainants to adjudge respondents guilty of contempt, notwithstanding the return to the citation herein, having come on to be heard at this term, was argued by counsel and submitted, and, the court being now fully advised thereof, it is ordered, adjudged, and decreed that said motion be, and the same is, denied, with leave, however, to complainants, if they so elect, to take issue with any of the averments in the return by filing denial thereof within five days; otherwise said respondents shall stand discharged from the citation at complainants' costs at the expiration of said five days, no denial of the return having been filed in the meantime.

94 And afterwards, to wit, on the twenty-sixth day of May, A. D. 1888, the following further proceedings were had and appear of record in said cause, to wit:

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

On motion of complainants, by their solicitors, the time for taking issue with any of the averments in the return is hereby extended to June 4, 1888.

And afterwards, to wit, on the first day of June, A. D. 1888, there was filed in said cause a reply to return in words and figures following, to wit:

(*Reply to Return.*)

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, } *ss:*

In the Circuit Court of the United States in and for the Eastern Division of said Judicial District.

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES H. SINGLETON *et al.*, Defendants. } 1505.

In the matter of citation against R. M. Thompson, J. E. Billups, W. W. Buford, and William Y. Wyne to show cause why
95 they should not be punished for contempt.

Amended Information and Reply to Respondents' Return.

Now comes complainants William Hill and J. E. Walker, and also Emily A. Knox, widow and heir-at-law of George S. Knox, deceased, who was one of the original complainants herein, but departed this life during the pendency of said suit, and in whose place William Hill, his administrator, was substituted as complainant in his stead. The said Emily A. Knox, who is now and for the last twenty years past has been a resident and citizen of the State of Illinois, comes and informs the court that since the final decree in this cause was rendered, in 1882, the estate of her said deceased husband has been wound up and she allotted her portion of said estate, among which was an interest in stock and bonds of the said Missouri, Iowa & Nebraska Railway Company to the amount of ten thousand dollars or more, and that by the terms of purchase of the said Missouri, Iowa and Nebraska railway at said foreclosure she became and was entitled to a corresponding interest in the present Keokuk & Western Railroad Company, and that she never has parted with that interest and now is the owner of some eight thousand dollars of the capital stock of said last-named company. She further represents to the court that she has never authorized the Keokuk & Western Railroad Company, unless it be in a constructive manner, because of her interest in said company as a stockholder, to waive her right as such stockholder to prosecute for contempt or otherwise any person or persons who should violate the injunction herein; that in fact she never did, until after the issuing out of the citation for contempt herein, know that said respondent Wine had brought suit in the circuit court of Scotland county, Missouri, to enforce the collection of taxes alleged to
96 have been assessed for the year 1886, or that the said Keokuk & Western Railroad Company had filed answers and gone to trial in said suit, nor that judgment had been rendered in said court against said company for such taxes, nor did she ever know of the said intervention in the United States circuit court at Keokuk, Iowa, for the alleged taxes of 1885 being tried or presented, and therefore, as she is advised, has not in any way waived her rights to enforce the terms of said decree.

Complainants John E. Walker and William Hill deny that they or either of them have ever parted with their interest in said railway property and, like the averments herein made by said Emily S. Knox, have retained and now own about eight thousand dollars each of the capital stock of the said Keokuk & Western Railroad Company. They charge the facts to be that they were never advised as to the facts that respondent Wyne had brought suit in the circuit court of Scotland county, Missouri, against 'the Keokuk & Western Railroad Company to recover alleged taxes levied upon the property of the said Missouri, Iowa & Nebraska Railway Company for the year 1886, nor that said Wyne had intervened in the foreclosure proceedings pending in the circuit court of the United States for the eastern division of the southern district of Iowa for the purpose of collecting the taxes alleged to be due upon said

property for the year 1885, nor that said suit had been tried; that as such stockholders they have never consented in any way to allow said Keokuk and Western Railway Company to defend said suits in the said courts or waive what right they might have and have always had in the injunction decree herein to prosecute for contempt any person or persons who might violate said injunction, unless by the mere facts that they were stockholders in said company, and neither did nor knew anything about the matters whatever until advised by counsel about the time the citation herein
97 was sued out.

They and the said Emily S. Knox are therefore advised that neither or any of them are estopped or forced by reason of any of the matters alleged in said return from prosecuting these contempt proceedings, and therefore pray as in said original information and citation they have already prayed.

WILLIAM HILL,
EMILY S. KNOX, &
JOHN E. WALKER,
By F. T. HUGHES, *Counsel.*

And afterwards, to wit, on the fifteenth day of January, A. D. 1889, the following further proceedings were had and appear of record in said cause, to wit:

(*Amended Information Filed.*)

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

Now come the complainants, by their solicitors, and, by leave of court, file amended information against R. M. Thompson, J. E. Billups, W. W. Buford, and Wm. H. Wine.

And thereupon leave is granted respondents to file return by February rules, 1889.

Said amended information is in words and figures following, to wit:

98 (*Amended Information.*)

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAS. H. SINGLETON *et al.*, Defendants. } In Equity.

Substituted and amended information against certain of the defendants for violation of the perpetual decree of injunction in this cause.

Complainants hereinafter named come now, and, by leave of court, for their substituted and amended information to the complaint heretofore filed in above cause *and* state—

That the county court of said Scotland county heretofore and in violation of the decree herein levied certain State, county, municipal, and other taxes upon the property of the said Missouri, Iowa and Nebraska Railway Company for the years 1885 and 1886, and that one William H. Wine, a collector of the revenue of said county, has, in violation of said decree, brought suit, and is now proceeding with said suits and endeavoring in every way to enforce the collection of said illegally levied taxes.

That Robert M. Thompson, J. E. Billups, and W. W. Buford are now (meaning at the date of filing the original information herein) the county judges of the said county of Scotland, and, as such judges, have been and are appropriating the funds of said county to aid in the prosecution of said suits to collect said illegal taxes for said years.

That William Hill and J. E. Walker and also Emily A. Knox, widow and heir-at-law of George S. Knox, deceased, who was
99 one of the original complainants herein, but departed this life during the pendency of said suit, and in whose place William Hill, his administrator, was substituted as complainant in his stead; —. The said Emily A. Knox, who is now and for the last twenty years past has been a resident and citizen of the State of Illinois, states that since the final decree in this cause was rendered in 1882 the estate of said deceased husband has been wound up and she allotted her portion of said estate, among which was an interest in stock and bonds of the said Missouri, Iowa & Nebraska Railway Company to the amount of ten thousand dollars or more, and that by the terms or purchase of the said Missouri, Iowa & Nebraska railway at said foreclosure she became and was entitled to a corresponding interest in the present Keokuk & Western Railroad Company, and that she never has parted with that interest and now is the owner of some eight thousand dollars of the capital stock of said last-named company. She further states that she never authorized the Keokuk & Western Railroad Company, because of her interest in said company as a stockholder, to waive her right as such stockholder to prosecute for contempt or otherwise any person or persons who should violate the injunction herein; that, in fact, she never did, until after the issuing out of the citation for contempt herein, know that said respondent Wine had brought suit in the circuit court of Scotland county, Missouri, to enforce the collection of taxes alleged to have been assessed for the year 1886, or that the said Keokuk & Western Railway Company had filed answer and gone to trial in said suit, nor that judgment had been rendered in said court against said company for such taxes, nor did she ever know of the said intervention in the United States circuit court at Keokuk, Iowa, for the alleged taxes of 1885 being tried or
100 presented, and therefore, as she is advised, has not in any way waived her rights to enforce the terms of said decree.

Complainants John E. Walker and William Hill *state* that they or either of them have ever parted with their interests in said railway property and, like the averments herein made by said Emily S. Knox, have retained and now own about eight thousand dollars

each of the capital stock of the said Keokuk & Western Railroad Company. They further state that neither of them were ever advised as to the fact that respondent Wine had brought suit in the circuit court of Scotland county, Missouri, against the Keokuk & Western Railroad Company to recover alleged taxes levied upon the property of said railway company for the year 1888, nor that said Wine had intervened in the foreclosure proceedings pending in the circuit court of the United States for the eastern division of the southern district of Iowa for the purpose of collecting the taxes alleged to be due upon said property for the year 1885, nor that said suit had been tried; that neither of them has ever been director or officer in said Keokuk & Western Railroad Company; that as such stockholders they have never consented in any way to allow said Keokuk & Western Railroad Company to defend said suits in the said courts or waive what right they might have had in the injunction decree herein to prosecute for contempt any persons who might violate said injunction, unless by the mere fact that they were stockholders in said company, and in fact did not know anything about the matters whatever until advised by counsel about the time the citation herein was sued out.

They and the said Emily A. Knox are therefore advised that neither or any of them are estopped or barred by reason of any of the matters pretended and given out by respondents from prosecuting these contempt proceedings.

101 Complainants state that respondents The County Court of Scotland County, Robert M. Thompson, Joseph E. Billups, W. W. Buford, and William H. Wine pretend and give out that a former collector of said county brought a suit in the circuit court of the United States for the southern district of Iowa for the taxes of 1885 levied upon the railway property in said Scotland county in the name of and against the said Missouri, Iowa & Nebraska Railway Company, as owner thereof, but your complainants charge that the same was begun and filed on the 4th day of March, 1886, by filing an intervening petition in the then foreclosure proceedings of the said Farmers' Loan & Trust Company against the Missouri, Iowa & Nebraska Railway Company and the receiver of the said railway property in said foreclosure proceedings, to wit, Thomas Thacher; that said intervention proceedings were not tried in said court until after the sale of said property and acquisition of same by the Keokuk & Western Railroad Company, successor by purchase at said foreclosure sale of the said Missouri, Iowa & Nebraska Railway Company; that the said receiver had been discharged in the meantime and the restraining order herein granted when, on the — day of March, 1888, the said W. H. Wine, intervenor in said suit, pressed his suit in said cause for trial; that the master in chancery, hearing said cause, ruled that inasmuch as the receiver had been discharged the answer filed by him could not be considered nor could the Keokuk & Western Railroad Company, complainant herein, make said defense in said receiver's name, and therefore, unless the said Keokuk & Western Railroad Company could enter its appearance and file answer, a judgment would be entered against

the property for said taxes; thereupon said Keokuk & Western Railroad Company did enter its appearance and move for said cost deposit alleged and charged by defendant, and in due time
102 said Keokuk & Western Railroad Company answered, setting up the proceedings and record in said Secor-Singleton case referred to in the original complaint herein, but your orators charge that said cause has not been reported upon by said master and the proceedings have been stayed by order of this court awaiting the decision in this case.

The said respondents also pretend and give out that a suit was brought by said former collector, W. H. Wine, in the circuit court of Scotland county, Missouri, for taxes of 1886 levied on said railroad property in said county against the Missouri, Iowa & Nebraska Railway Company as owner thereof, and also pretend and charge that said Keokuk & Western Railroad Company appeared in said suit and made defense thereto, and that judgment was rendered in said cause in said court against it for the said taxes of 1886, and therefore that the same has become and now is *res adjudicata* as to such matters as were therein pleaded; whereas your orators charge that said cause was duly appealed to the supreme court of the State of Missouri, and that a supersedeas bond was given in said cause by said Keokuk & Western Railroad Company and approved by the said court, and a supersedeas granted by the said court, and the same is still pending in the said supreme court in the State of Missouri and has not been decided, and therefore your orator says the matters and things are not *res adjudicata*, nor are they binding as an estoppel or in any other way upon complainants in this cause as a defense thereto.

Complainants further aver and charge that in the said Secor-Singleton case herein the counties of Scotland, Schuyler, and Clark were parties defendants thereto, and in said cause it was expressly, among other things, decided and decreed "that the said Missouri, Iowa & Nebraska Railway Company was completed, as re-
103 quired by the charter of said Alexandria & Bloomfield Railroad Company, about the first day of December, 1872, and that the counties named, the county courts, the collectors of said counties, their successor and successors in office, were each and every one of them perpetually enjoined and restrained from levying or attempting to levy, from collecting or in any manner attempting to collect, off of the said Missouri, Iowa & Nebraska Railway Company any taxes, whether State, county, school, or municipal, of whatever kind or character, until the expiration of the exemption limited in the charter of said railway company, to wit, December 1st, 1888, and that the said Missouri, Iowa & Nebraska Railway Company, by its officers, agents, or employés, were each and every one of them in said suit also perpetually enjoined from paying any such taxes as have or may be levied for the years prior to the said first day of December, 1892."

Your orators further state that the respondents herein give out and pretend that in all they or any of them have done or are doing in the way of levying and attempting to collect taxes on the prop-

erty aforesaid, as charged in said complaint, that they, the said defendants, have only acted as officers of the said State of Missouri and in its behalf, and therefore have no personal interest of any kind in the subject-matter of this suit, but are acting solely as agents for the said State of Missouri, which is the real party in interest. Wherefore your orators say that the defendants are not acting for the said State of Missouri, but for their own behalf, and that they are the real and only parties in interest.

Your orators further say that the respondents give out and pretend that the said property was by the said Missouri, Iowa &
Nebraska Railway Company leased to the Wabash, St. Louis
104 & Pacific Railway Company, and that therefore the same became and was, from the date of said lease, to wit, about the first day of September, 1880, taxable because of said lease, and that the said Wabash, St. Louis & Pacific Railway Company thereupon became the sole and absolute owner of the said property, franchises, and privileges. Wherefore your orator charges that the said Wabash, St. Louis & Pacific railway was a corporation duly organized and existing under the laws of the State of Missouri, and that the said lease was duly authorized by the laws thereof, and that thereupon the said Wabash, St. Louis & Pacific railway did not become the owner or owners in anywise, but that the said Missouri, Iowa & Nebraska Railway Company remained the owner thereof, and that the same was not rendered liable to taxation by virtue of said lease or for any other cause in the premises; that the said lease was subject to certain conditions and limitation therein—that is to say, the said Wabash Company covenanted to maintain and operate the said railway, fully maintain the equipment as it was at the date of said pretended lease and any further equipment that might be supplied, at its own cost and expense, and agreed to keep the said railway in good condition and repair for the full term of the lease, setting aside 30 per cent. of the gross earnings by which to pay interest on bonds secured by mortgage on said property, and to pay the balance of said 30 per cent. in each year to the said Missouri, Iowa & Nebraska Railway Company, and also the said Wabash Company further expressly guaranteed to pay the interest on said bonds in each year as such interest matured and fell due. These conditions, among others, will more fully appear in the copy of said lease, to which reference is here made, a true copy of which is
found, beginning — page 594 of volume 2, Substituted Ex-
105 hibits, in this court, case of The Wabash, St. Louis & Pacific Railway Company against The Central Trust Company of New York *et al.*, in chancery.

Complainants say that long prior to the levying of the taxes or any part thereof sought to be enjoined by the complainants herein, to wit, March 1st, 1884, said Wabash Company became wholly insolvent, failed, and refused to pay any further interest on certain bonds or to maintain and operate said railway under the covenants in said lease, and by decree of the circuit court of the United States for the eastern district of Missouri made on May 28th, 1884, its entire property was placed in the hands of receivers during the pend-

ency of certain foreclosure proceedings therein, and, so continuing insolvent and failing to comply with the covenants in said lease, the circuit court of the United States for the southern district of Iowa, eastern division thereof, on or about the 2nd day of July, 1885, and upon request of the Farmers' Loan & Trust Company, trustee in the mortgage made to it by the said Missouri, Iowa & Nebraska Railway Company in the year 1870, and in and as part of the proceedings of the foreclosure case referred to in the original complaint herein, appointed Thomas Thacher receiver of the said Missouri, Iowa & Nebraska Railway Company and its property thereof, and thereafter said receiver took possession of said property and operated the same as the property of said railway company, under the orders of said court, until the sale and delivery to complainant herein on said 3rd day of December, 1886, as stated in said original complaint. Complainants further aver and charge that it was adjudged and decreed by the circuit court of the United States for the said district of Missouri, during the September term of 1885 thereof, in a cause therein depending wherein the said Wabash, St. Louis & *Missouri* Railway Company and the
106 said Missouri, Iowa & Nebraska Railway Company were each parties thereto, to wit, in the cause in equity *in* The Central Trust Company of New York and others against The Wabash, St. Louis & Pacific Railway Company and others, consolidated cause; that the said lease of the said Missouri, Iowa & Nebraska Railway Company to the said Wabash, St. Louis & Pacific Railway Company was conditioned, and for the said breaches of the terms of said lease by the said Wabash Company the same had become and was lawfully terminated, and your orator charges and avers that such matters and things were and became and are *res adjudicata* and *stare decisis*, all of which will more fully and at large appear by copy of said decree, which complainant will produce when and where this honorable court shall direct.

Your orator further states that the respondents pretend and give out that the said charter of the said Alexandria & Bloomfield Railroad Company was duly repealed by the legislature of the State of Missouri on the 27th day of February, 1875, and that therefore, since said date, the said property became and ever since has been subject to taxation; wherefore your orator charges that the said act was not repealed or in anywise affected by the laws of the said State, for the reason that if any such laws were passed as claimed by defendants that the same were null and void within the meaning of section 10, article 1, of the Constitution of the United States, as impairing the obligation of contract between the said State of Missouri and the said Alexandria & Bloomfield Railroad Company, the Missouri, Iowa & Nebraska Railway Company, and the said Keokuk & Western Railroad Company, as legal successors of all such rights, privileges, exemptions, and immunities as were granted and contained in said charter of the said Alexandria & Bloomfield Railroad Company; that the said exemption was such an
107 irrepealable contract was fully adjudicated and decided by the said circuit and supreme courts of the said State of Mis-

souri in the said case of Scotland County against the said Missouri, Iowa & Nebraska Railway Company, and by the said circuit court of the United States in said Secor-Singleton case herein, and all of which complainant says became and is *res adjudicata.*

And your orator further says that certain of defendants pretend and allege that as to the said county of Scotland said Missouri, Iowa & Nebraska Railway Company agreed with the said county of Scotland, in about the year 1870, to make no further claim of exemption from taxation of its property in said cause, but your orator charges that no such contract or agreement was ever entered into, as pretended and claimed, and that furthermore, if the same had been done as given out and pretended, such facts and agreements existed and were known to the said county of Scotland when this case and the said case of Scotland County against the Missouri, Iowa & Nebraska Railway Company in the said Scotland county circuit court and the said supreme court of the said State of Missouri were being heard and tried in said United States and State courts, and that it was thereupon the duty of said County of Scotland, as a defendant in said causes, to ascertain and bring forward such pretended claim and have the same adjudicated among the other matters in said causes and, whether the same was so adjudicated or not, all such matters became and were and are finally decided and adjudicated in said courts and are therefore *res adjudicata*, and the defendants are now estopped from making such claim or pretense, whether the same be true or not.

Complainants pray that inasmuch as citation has issued in this cause upon the original information herein that the said collector and the said county judges be required to answer the complaint herein and to show cause, if any, why they should not be committed for contempt of the decree herein and for such other and
108 further orders as to the court may seem just and proper in the premises.

J. E. WALKER, ET AL.,
Complainants.

STATE OF IOWA, }
County — Lee, } *ss:*

F. T. Hughes, of lawful age, being duly sworn, on his oath states that he is of counsel for complainants in the within and foregoing information; that he has read the same and is well acquainted with the facts therein stated, and that they are true, as he verily believes.

F. T. HUGHES.

Subscribed and sworn to before me this 8th day of January, 1889.

My commission as notary expires July 4th, 1892.

[SEAL.] L. HAGERMAN,
Notary Public.

In United States Circuit Court, Eastern District of Missouri.

CHARLES A. SECOR *et al.*
vs.
JAMES H. SINGLETON *et al.* } In Equity.

To W. H. Wine, R. M. Thompson, W. W. Buford, & J. E. Billups, respondents, or their solicitor, John C. Moore:

Take notice that I shall move the court on Jan'y 14th, 1889, or as soon as counsel can be heard in the above-entitled cause, for leave to file a substituted amended information against above-named respondents for violation of decree of injunction in above cause, a true copy of which is herewith presented.

F. T. HUGHES,
Solicitor for Complainants.

109 The foregoing notice was served on me this January 9, 1889, at my office, in Scotland county, Missouri, by delivery.

JOHN C. MOORE,
Solicitor for Respondents Named.

Said copy of lease above referred to is in words and figures following, to wit:

SUB-EXHIBIT F No. 50.

Lease of the Missouri, Iowa and Nebraska Railroad.

This indenture of lease, made this 3d day of September, A. D. 1880, by and between the Missouri, Iowa and Nebraska railway, a consolidated corporation of Iowa and Missouri, of the first part, — the Wabash, St. Louis and Pacific Railway Company, a consolidated corporation of Ohio, Indiana, Illinois, and Missouri, of the second part,

Witnesseth: The party of the first part, in pursuance of a resolution of its board of directors adopted on the — day — ——, A. D. 1880, and the further authorization of its stockholders thereto, and in consideration of the covenants and agreements on the part of the party of the second part hereinafter contained, does hereby let, demise, and lease unto the party of the second part, its successors and assigns, for the term of ninety-nine years from this date, renewable in like periods forever, at the option of the party of the second part, the railroad of the party of the first part extending from the Mississippi river at Keokuk, Iowa, westerly through and across the States of Iowa and Missouri to a point on the Missouri river opposite Brownville, Nebraska, as now owned, constructed, or used

110 or as at any time hereafter the said railroad may be owned, constructed, or used by the said party of the first part, together with all embankments, bridges, turnouts, side tracks, water tanks, and fixtures, shops, engine or other houses, turn-tables, engines, cars, machinery, tools, rolling stock, lots, lands, buildings, offices, and all

things, real or personal, now owned or used or that may hereafter be owned or used by the said party of the first part in connection with the said railroad and everything appertaining thereto, and all the franchises, powers, privileges, and chartered or other rights of the said party of the first part, so far as the same may be needful or advantageous to the said party of the second part, as lessee of the premises above described, provided that the rights of the party of the first part to any subscription or promise payable on the completion of any part of its railroad is expressly reserved from the above:

To have and to hold the said demised railway and property, real and personal, and franchises, as above provided, unto the said party of the second part, its successors and assigns, to and for the full end and time of ninety-nine years from and after the date of these presents and any and all renewals thereof forever, at the option of the party of the second part, as above set forth.

And in consideration of the premises the party of the second part hereby covenants that it will maintain and operate the said railroad, fully maintaining the present equipment thereof and any further equipment which may be supplied, at the cost of the party of the second part, keeping the said railroad and equipment in good condition and repair for the full term of this lease and of any renewal thereof, and will indemnify and save harmless the said party of the first part from and against all damages and liability whatever in connection with the operation of the same, and will keep full
111 and accurate accounts of all its earnings from the same, which shall at all times be open to inspection by the duly constituted agents or committees of the party of the first part.

The party of the second part further covenants that it will, in each year while said property is held under this lease, set aside from the gross earnings a sum equal to thirty per cent. thereof, and will apply the same as follows:

First. To the payment of all lawful taxes and assessments levied on said property.

Second. To the payment of the interest on the mortgage bonds of the party of the first part under its deed of trust or mortgage dated June 1st, 1870, and the supplementary indenture of March 1st, 1875.

Third. To the party of the first part, on the first days of April and October in each year, the balance of said thirty per cent. accruing from the earnings of said property for six months preceding the first days of March and September in each year.

Fourth. The party of the second part moreover expressly guarantees that the interest paid by it upon the mortgage bonds aforesaid of said first party shall not be less than at the rate of four and one-half per cent. per annum upon the par value of said bonds, which said first party stipulates does not exceed three millions twenty-five thousand dollars.

The interest aforesaid shall be paid at the office or agency of said second party, in the city of New York, on the first days of April and October in each year, until such time as said bonds shall have been retired by foreclosure or exchange, as hereinafter referred to; but in

no case shall this or any of the covenants herein be binding
112 on said second party after it shall, for any cause other than its own acts, be divested of possession under this lease.

It is further mutually declared that this lease is made and accepted in furtherance of an agreement February 12th, 1880, by and between the first and second parties hereto and the trustees of the holders of the mortgage bonds of the first party hereto, the rental above stipulated of four and one-half per cent. on said bonds of said first party, which have been issued to the amount of twenty thousand dollars per mile of completed road, being an equivalent for six per cent. on the fifteen thousand dollars per mile of said railroad in bonds of said first party hereafter to be issued in exchange therefor, as in said agreement provided.

It being found impracticable for said first party to complete its railroad as in said agreement provided, the parties above named have procured the incorporation of a railway company of Iowa, known as the Iowa, Missouri and Nebraska Railroad Company, to build and have a line of railroad from Prairieville, Iowa, to which point the first party's railroad has been completed, to and beyond the junction with the railroad of the second party hereto, as specified in said agreement.

The second party hereby covenants that the completion of the railroad of the Iowa, Missouri and Nebraska Railroad Company to such point of junction shall be accepted by it in lieu of the completion of the railroad of the first party hereto, as stipulated for in said agreement, it being mutually stipulated by the parties hereto that — shall continue otherwise in full force and unaffected.

The second party further covenants that in the event that the Iowa, Missouri and Nebraska railroad above mentioned shall be completed to a junction as aforesaid before the exchange of
113 stock and bonds provided for in said agreement shall be made, then the second party will thereafter pay, in addition to the rental hereinbefore provided for the holders of the bonds and stock of said first party, such sum, in lieu of dividends, as in and by said agreement it is provided shall be paid.

It is further expressly understood and agreed that the execution and acceptance of this lease shall constitute the second party the successor and assigns of the first party as lessee of the Centreville, Moravia and Albia railroad, and as such, having all the rights and obligations of such lessee, the said second party particularly assuming to pay during such time as the Centreville, Moravia and Albia railroad shall remain in its possession and control the interest guaranteed by the first party upon four hundred first-mortgage bonds as part of the consideration for said lease.

The second party covenants that upon the presentation to it by the owner thereof of any receipt from the Farmers' Loan and Trust Company for the said mortgage bonds of the Missouri, Iowa and Nebraska Railroad Company, given by said Farmers' Loan and Trust Company in pursuance of the plan of reorganization of said company, whereby the three trustees who signed the said agreement

of February 12th, 1880, were appointed, it will endorse upon or attach to said receipt the following:

"The Missouri, Iowa and Nebraska railroad has been leased to the Wabash, St. Louis and Pacific Railway Company upon terms which provide for the exchange of bonds covered by the within certificate at the rate of fifteen thousand dollars six per cent. bonds and five thousand dollars preferred stock of said Wabash, St. Louis and Pacific Railway Company for every twenty thousand dollars
114 of said bonds, such exchange to be made only after the title of the lessee therein is perfected, as provided for in said agreement.

"Pending the steps necessary to legalize such exchange the Wabash, St. Louis and Pacific Railway Company is to pay to the holder hereof interest at the rate of four and one-half per cent. on the par value of the bonds covered by this certificate.

"Whenever the Iowa, Missouri and Nebraska railroad shall have been constructed and the cars running thereon from Prairieville, Iowa, to a junction with the said Wabash, St. Louis and Pacific railway, so that said railway shall have the benefit of a continuous line from Keokuk, Iowa, to the junction aforesaid, then from that date, during its tenure under the said lease, the Wabash, St. Louis and Pacific Railway Company shall pay as further rental such further sum as shall equal the dividends declared by said Wabash, St. Louis and Pacific Railway Company upon such an amount of the preferred stock above referred as the holder hereof will by the terms of said lease be entitled to receive, the interest aforesaid to be paid at the office or agency of said Wabash, St. Louis and Pacific Railway Company in the city of New York on the first days of April and October in each year, commencing April 1st, 1881."

The second party further covenants that upon the deposit of certificates for any number of shares of the common stock of the Missouri, Iowa and Nebraska Railway Company by any stockholder with A. L. Hopkins, as trustee, accompanied by a power of attorney to said trustee to hold and vote said stock, the said trustee shall issue to said stockholder a receipt for the same in pursuance of this agreement and to the effect that when the party of the second part shall become vested with a complete title to the property of
115 the party of the first part it will issue to said stockholder, in exchange for the stock so deposited, the common stock of the said Wabash, St. Louis and Pacific Railway Company in the ratio that five thousand dollars of its said stock per mile on the line of the said Missouri, Iowa and Nebraska railway from Keokuk to Prairieville, Iowa (being 148½ miles), shall bear to the total issue of the stock of the party of the first part, and that meantime, if the railroad of the Iowa, Missouri and Nebraska Railroad Company (now in process of construction) shall be completed from Prairieville, Iowa, to a junction with the railway of the Wabash, St. Louis and Pacific Railway Company, so that said company shall enjoy and use a continuous railway from Keokuk, Iowa, to the junction of above named, then from that date until the exchange above mentioned shall be made (so long as in possession under this lease)

the said company will pay to the holder of such certificate a sum equivalent to the dividends which said company may declare upon the same amount of common stock.

It is further stipulated and mutually agreed that before entering upon the back of the above-described receipts of the Farmers' Loan and Trust Company for the said Missouri, Iowa and Nebraska bonds the guaranty aforesaid or attaching the certificate of guaranty thereto the said receipts for bonds shall first have stamped or written thereon—

"Subject to an agreement made by the within-named trustee with the Wabash, St. Louis and Pacific Railway Company for a consolidation or lease of the Missouri, Iowa and Nebraska railroad."

In witness whereof the first and second parties above named have caused their seals and signatures to be hereto affixed by their respective presidents and secretaries the day and year above
116 written.

MISSOURI, IOWA AND NEBRASKA RAILROAD COMPANY,
By F. M. DRAKE, *President.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY,
By SOLON HUMPHREYS, *President.*

And afterwards, to wit, on the twenty-ninth day of January, A. D. 1889, there was filed in said cause a return of respondents to amended information in words and figures following, to wit:

(*Return of Respondents to Amended Information.*)

In the Circuit Court of the United States for the Eastern District of Missouri.

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAS. H. SINGLETON *et al.*, Defendants.

To the judges of the circuit court of the United States for the eastern district of Missouri:

Return of the County Court of Scotland County, Missouri: Robert M. Thomson, Joseph E. Billups, W. W. Buford, and William H. Wine to the citation to show cause why they should not be punished for contempt of the decree in the above-entitled cause.

Respondents come now, in response to the citation hereinbefore issued, and show to your honors that they admit that they
117 were justices of the county court of Scotland county, Missouri, at the time the information was originally filed herein, and that W. H. Wine had been the collector of the revenues, but his term was ended. Respondents state that complainants ought not to be allowed to maintain this action, because the original bill in this cause was filed in violation of the 5th section of the act of Con-

gress of March 3rd, 1875, which prescribes "that if in any suit commenced in a circuit court or removed from a State court to a circuit court of the United States it shall appear to the satisfaction of said circuit court at any time after such suit has been brought or removed thereto that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act the said circuit court shall proceed no further therein, but shall dismiss the suit or remand it to the court from whence it was removed, as justice may require."

For further cause why complainants ought not to maintain this action, respondents say that the bill herein was filed in violation of rule 94 of the rules of practice in courts of equity of the United States, in this: that said rule prescribes that "every bill brought by one or more stockholders in a corporation against the corporation and other parties founded on a right which may properly be asserted by the corporation must be verified by oath and must contain an allegation that the plaintiff was a shareholder at the time of the transaction of which he complains, or that his share had devolved on him since by operation of law, and that the suit is not
118 a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and, if necessary, of the shareholders, and the cause of his failure to obtain such action;"

Whereas respondents say that the said bill did not contain the allegations prescribed in the rule, which rule was adopted and promulgated by the Supreme Court of the United States for the purpose of clearly defining the meaning of the said act of Congress, and that because of the failure in said bill to allege the matters and things prescribed in said rule, this court is without jurisdiction to entertain this case.

Respondents deny that the said Knox, Hill, and Walker have any right to maintain this action, because the substituted and amended information shows that they do so as stockholders of the Keokuk and Western Railroad Company, and they charge that the said Keokuk and Western Company has no interest in this suit and was never a party thereto.

Respondents deny that the said Knox, Hill, and Walker hold their stock in the Keokuk and Western Railroad Company by virtue of any of the terms of purchase of the said Missouri, Iowa and Nebraska railway at said foreclosure sale, and charge that they hold their stock in said Keokuk and Western Company on the same terms only of other subscribers to the capital stock of said company; that the manner in which said property was transferred is as follows: On the 13th day of August, 1885, in pursuance of said decree, all the said railroad property of the Missouri, Iowa and Nebraska Railway Company was sold in the city of Keokuk to

Morris K. Jessup and Henry C. Thacher by P. T. Lomax,
119 Esq., master in chancery in the Federal court there and special commissioner to make such sale; that the said sale, on or about the 21st day of September, 1886, was duly confirmed by the United States circuit court, sitting at Keokuk, and that thereafter, the said Jessup and Thacher having paid the purchase price as bid, the said property of the said railway company aforesaid was by the said Loma-, as such master, duly conveyed to said Jessup and Thacher, which said conveyance included all the railway property and premises of the said Missouri, Iowa & Nebraska Railway Company in both the States, Missouri and Iowa; that thereafter, for a good and valuable consideration, the said Jessup and Thacher conveyed the premises and property to the said Keokuk and Western Company, and on December 3rd, 1886, delivered the possession thereof.

Respondents say that they did not levy any taxes against the said railway property for 1885 & 1886, and that such levies were made before the respondents, Thomson, Billups, and Buford, came into office.

That the only appropriation of funds made by them to carry on litigation regarding the taxes of 1885 & 1886 was a deposit of $250.00 in behalf of the State of Missouri for costs on the order of P. T. Lomax, master in chancery, in Federal court, at Keokuk, Iowa, said order having been made in response to a motion by the said Keokuk and Western Railroad Company to that effect, which company had voluntarily appeared as a defendant in the action, then being heard by said master, for the taxes of 1885.

Respondents, for further reasons why they should not be committed for contempt at complainants' suggestion, state as follows:

The State of Missouri filed an intervening petition for the taxes of 1885 on the said property in the United States circuit court, in Keokuk, Iowa, against the Missouri, Iowa and Nebraska Railway
120 Company and Thomas Thacher, receiver appointed by that court, and that the Keokuk and Western Railroad Company voluntarily appeared therein as a defendant, made a motion for deposit of $250.00 for costs by the State, which motion the court sustained and the State complied with the order made; that the said company urged trial thereof, which trial was had, the said company contesting throughout the whole case.

That the State of Missouri filed a petition, substantially in statutory form, in the circuit court of Scotland county, Missouri, for the taxes of 1886, on said railway property, and that the said Keokuk and Western Railway Company appeared therein as defendant, filed an answer, went to trial in due form, and judgment was rendered in favor of the State and against said company for the said taxes of 1886, and the said company appealed the said cause to the supreme court of Missouri, where it is now pending.

That afterward the said company filed in the United States circuit court for the northern division of the eastern district of Missouri a suit, by way of injunction, to restrain these respondents and one Joel Ewing, the successor in office of respondent Wm. H. Wine,

from collecting or attempting to collect, from suing or attempting to sue for, the taxes of 1883, 1884, 1885, 1886, & 1887, which suit includes the whole period of time covered by the information herein; all which acts respondents say were taken and done by the said railroad company before the original information was filed herein charging respondents with contempt.

Wherefore respondents say that the said Keokuk and Western Railroad Company are estopped to maintain this cause as in contempt of the decree herein.

Respondents say that the decree herein is inoperative and
121 expired by reason of the dissolution and expiration of the Missouri, Iowa and Nebraska Railway Company, and that no person or corporation now exists who has interest in said decree.

They further declare that they did not know of said decree until about the time the citation herein was issued.

Respondents state that Secor & his co-complainants alleged in the bill herein that the Missouri, Iowa and Nebraska Railway Company was exempt from taxation because of a contract made by the State of Missouri with the Alexandria and Bloomfield Company, and show that the said action was commenced for the purpose of restraining breach on the part of the State of said contract; that the then defendants were all and the only officers and agents of the State, as these respondents are now, in Scotland county through whom the State could act in levying and collecting taxes; that they nor these respondents had any personal interest in the alleged taxes nor in this suit to restrain, but all such taxes belonged to the State; that no suit could be brought but by the State and in the name of the State; that the then defendants and present respondents are defending only as representing the State; wherefore they declare that this suit was and is a suit by citizens of other States against the State of Missouri, and that by the eleventh amendment to the Constitution of the United States this court is denied jurisdiction of said cause.

Wherefore they say that, having answered fully all the charges in said substituted and amended information, wherein they have fully shown that they are not in contempt of this court, they pray that they be discharged without day, and that they have judgment for their damages and costs herein most wrongfully laid out and expended, and for attorney's fees which they have been compelled to pay, and for all other proper relief.

122 ROB'T M. THOMSON.
W. W. BUFORD.
J. E. BILLUPS.

STATE OF MISSOURI, }
County of Scotland, } ss:

Robert M. Thomson, Joseph E. Billups, and W. W. Buford, being duly sworn, depose and say that they are respondents in the foregoing return to the citation and amended complaint herein filed; that they have heard the same read and know the contents thereof;

that the said return is true of their knowledge, except as to those matters which are therein stated to be on their information and belief, and as to those matters they believe them to be true.

ROBT M. THOMSON.
W. W. BUFORD.
J. E. BILLUPS.

Subscribed and sworn to before me this the 26th day of January, A. D. 1889.

In testimony whereof I have hereto set my hand and the [SEAL.] seal of the probate court of Scotland Co., Mo., the day and year above written.

J. Y. McCLINTOCK,
Judge of the Probate Court Aforesaid.

And afterwards, to wit, on the sixth day of March, A. D. 1889, the following further proceedings were had and appear of record in said cause, to wit:

(*Motion for Citation Filed.*)

123 CHARLES A. SECOR *et al.*, Complainants, *vs.* JAMES K. SINGLETON *et al.*, Defendants. } 1505.

Now come the complainants, by their solicitors, and file motion for citation against William H. Wine, county collector of Scotland county, the county judges of Scotland county, and John C. Moore, their counsel, to show cause why they should not be punished for contempt for violation of a decree of this court rendered on the tenth day of May, 1882, which is submitted on the part of said complainants.

Said motion for citation is in words and figures following, to wit:

(*Motion for Citation.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri.

CHAS. A. SECOR *et al.* *vs.* JAMES K. SINGLETON *et al.*

Motion to punish William H. Wine, county collector of Scotland county, the county judges of Scotland county, and John C. Moore, Esq., their counsel, for violation of injunction in the above-entitled cause and in directing a continued violation of said injunction, and in taking steps now before the case has been finally heard, and for violating the agreement of counsel heretofore made in this cause, to the effect that neither party should or would do any act in the matter concerning the suits pending against the Keokuk & Western Railroad Co. until this cause should be finally determined by this court.

124 Now come the complainants in the above-entitled cause,

to wit, William Hill, John E. Walker, and Emily A. Knox, and, for the reasons more fully set forth in the affidavits and other papers heretofore filed in support of this motion and now made a part of this motion and attached hereto, move that said William H. Wine, county collector as aforesaid, the county judges of Scotland county as aforesaid, and John C. Moore, their counsel and prosecuting attorney of Scotland county, be cited to show cause why they should not be punished by this honorable court for a violation of the injunction heretofore granted in this cause and the restraining order therein, as well as their agreement, made in open court in said cause by their said counsel, John C. Moore.

P. T. HUGHES.
H. S. PRIEST.
GEORGE S. GROVER.
Solicitors for Complainants.

STATE OF MISSOURI, }
City of St. Louis, } ss.

Felix T. Hughes, of lawful age, being duly sworn, on his oath states that he is now and since the filing of the original motion in contempt proceedings herein has been counsel for complainants in the above-entitled cause; that since the issuing of the original citation in these contempt proceedings, at a time in open court, counsel for respondents, John C. Moore, agreed with other counsel for complainants that no further steps should or would be taken in the case then pending in the Scotland circuit court against the Keokuk & Western Railroad Company, or in the United States court at Keokuk, Iowa, until the final order of this court in said contempt
125 proceedings; that the said William H. Wine, county collector, and said John C. Moore are proceeding now with said cause in said Scotland county circuit court to have the same advanced for hearing in the supreme court of Missouri, and have served notice, copy of which is hereto attached, of their intention so to do, and are proceeding in every way with said cause as if no such agreement had heretofore been made, and, as your affiant believes, is in contempt of the original decree of this court.

F. T. HUGHES.

Subscribed and sworn to before me this 6 day of March, A. D. 1889.

[SEAL.] T. L. CRAWFORD,
U. S. Com'r.

And also on said sixth day of March, A. D. 1889, there was filed in said cause an affidavit in support of the above motion for citation in words and figures following, to wit:

(*Affidavit in Support of the Above Motion for Citation.*)

U. S. Court, East. Div., East Dist. Mo.

SECOR *et al.*
vs.
SINGLETON *et al.*

Affidavit of F. T. Hughes.

F. T. Hughes, of lawful age, being sworn, on oath says he has been president & general counsel of the Keokuk & Western Railroad Company since its organization, on October 30th, 1886; that it took possession under order of United States court of eastern division of southern district of Iowa of property of Missouri, Iowa
126 & Nebraska railway *property* on December 3d, 1886; that he is acquainted & knew how J. E. Walker, Wm. Hill, & Emily E. Knox each acquired some ten thousand dollars' worth of the capital stock of the said Keokuk & Western Railroad Company. They so acquired by reason of their former interest in the said M., I. & N. property; that said property was purchased at the foreclosure sale by a purchasing committee of the former owners & reorganized, each person under the purchase taking such interest in stock in the new company as his proportionate interest in the old company bore to amount of stock in the new. He further states that each of said parties now own the amount of such stock at least as is charged in information herein, to wit, about eight thousand dollars each of the said capital stock.

F. T. HUGHES.

Subscribed & sworn to before me this 6th day of March, A. D. 1889.

A. P. SELBY, *Clerk.*

And afterwards, to wit, on the eighth day of March, A. D. 1889, the following further proceedings were had and appear of record in said cause, to wit:

(*Motion for Citation Overruled.*)

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

The motion of complainants for a citation against William H. Wine, county collector of Scotland county, the county judges
127 of Scotland county, and John C. Moore, their counsel, to show cause why they should not be punished for contempt for violation of a decree of this court rendered on the tenth day of May, 1882, having been considered by the court, and the court being now fully advised thereof, it is ordered that said motion be, and it is hereby, overruled.

And afterwards, to wit, on the twelfth day of March, A. D. 1889, the following further proceedings were had and appear of record in said cause, to wit:

(*Withdrawal of Exhibit "Motion to Advance Case on Docket."*)

CHARLES A. SECOR *et al.*, Complainants,
vs. } 1505.
JAMES K. SINGLETON *et al.*, Defendants.

Complainants by leave of court withdraw Exhibit "Motion to Advance Case on Docket."

And afterwards, to wit, on the twenty-fifth day of February, A. D. 1890, the following further proceedings were had and appear of record in said cause, to wit:

(*Order as to Bill of Revivor.*)

CHARLES A. SECOR *et al.*, Complainants,
vs. } 1505.
JAMES K. SINGLETON *et al.*, Defendants.

128 Now, at this day, comes the Keokuk & Western Railroad Company, by F. T. Hughes and H. S. Priest, its solicitors, and asks leave of court to file its bill of revivor herein, and that process may be issued thereon; and, leave to file said bill having been granted, thereupon comes John C. Moore, Esq., solicitor for the county of Scotland, the county court thereof, R. N. Thompson, O. A. Barnes, and James M. Clark, the judges thereof, and Benjamin F. Bourn, collector of said county, and waives the issuance and service of process as respects said defendants and enters their appearance herein in opposition to said bill of revivor.

And also, at the same time, comes T. S. Montgomery, solicitor for the county of Clark, the county court of said county, and J. E. Todd, Charles Seyb, and George Harter, the judges thereof, and O. S. Callahan, collector of said county, and waives the issuance and service of process upon said defendants and enters their appearance hereto in opposition to said bill.

Thereupon the court orders that said defendants above named who have entered their appearance to this bill (their respective solicitors consenting thereto) show cause, if any they have, on Monday, the seventeenth day of March, A. D. 1890, why the relief prayed for in said bill should not be granted, and the further hearing of said bill is set for Tuesday, March 18th, 1890.

It is further ordered by the court that process of subpœna issue against the county of Schuyler and William Logan, J. J. Hall, and Timothy Neely, justices of the county court of said county, and against Nicholas T. Roberts, the collector of the revenue for said county of Schuyler, requiring them to show cause, if any they have,

on Monday, the seventeenth day of March, 1890, why the re-
129 lief prayed for in said bill should not be granted as against said last-named defendants, and the hearing of said bill as to said defendants is fixed for Tuesday, the 18th day of March, 1890.

(Signed) AMOS M. THAYER, *Judge.*

Said bill of revivor is in words and figures following, to wit:

(*Bill of Revivor.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri.

CHAS. A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } In Chancery.

Bill of revivor by Keokuk & Western Railroad Company and for citation against Benj. F. Bourn, collector — Scotland county, for contempt.

To the honorable judges of said court:

Humbly complaining unto your honors, your orator, The Keokuk & Western Railway Company, a corporation duly organized pursuant to the laws of the State of Iowa, would respectfully represent and show that Charles A. Secor, James F. Secor, John E. Walker, George S. Knox, and Charles H. Mellen exhibited their bill of complaint in this honorable court against the Counties of Scotland, Clark, and Schuyler, in the State of Missouri, the County Courts, and the then County Justices, as well as the then Collectors of
130 Revenue of the said several Counties; Thomas Holliday, the then auditor of the State of Missouri, and the Missouri, Iowa & Nebraska Railway Company, a consolidated corporation of the States of Iowa and Missouri, as defendants thereto, and thereby, after stating as therein mentioned, prayed that each and every one of said defendants and all others acting under or through them or their successors in office be restrained and enjoined until the year 1892 from the levying, assessing, or collecting, or attempting so to do, of any tax or taxes upon or against the property of the said Missouri, Iowa & Nebraska Railway Company situate or being in each or either of the said counties of Scotland, Clark, and Schuyler, and restraining the Missouri, Iowa & Nebraska Railway Company from paying any such tax or taxes.

Your orator further showeth unto your honors that process of subpœna was duly issued and served upon each and every one of said defendants, and that each and every one thereof made answer unto said bill, whereupon said cause came on to be heard and finally determined before this honorable court, when, after a dismissal as to the defendant Thomas Holliday, it was ordered, adjudged, and decreed as follows:

That the said defendants, the said several counties of Clark,

Scotland, and Schuyler, the said several county courts of said counties respectively, and the said several named judges of said several respective county courts, and the said several and respective collectors of said several and respective counties, by themselves, their officers or agents, or their said several and respective successors in office, be, and they are hereby, perpetually enjoined and restrained from levying or attempting to levy, collecting or in any manner attempting to collect from or of the said Missouri,
131 Iowa & Nebraska Railway Company any taxes whatever, State, county, school, or municipal, of whatever kind or character, until the expiration of the exemption alleged in the charter of said railway company, to wit, December 1st, 1892, and that the said Missouri, Iowa & Nebraska Railway Company, by its officers, agents, or employés, be, and are, also perpetually enjoined from paying any such tax or taxes as have or that may be levied for — years prior to the said 1st of December, 1892; which said decree became and was final and binding upon each and every one of said defendants, their agents and successors in office, and which still remains in full force and effect, never having been annulled, set aside, or reversed.

Your orator further represents that on the — day of ——, 1870, the said Missouri, Iowa & Nebraska Railway Company made and executed to the Farmers' Loan and Trust Company of New York as trustee its certain mortgage or deed of trust of that date, whereby it conveyed to said trustee all of its property, rights, privileges, and franchises then owned or thereafter to be acquired in connection with its line of railway, as described in the original bill herein filed, to secure the payment of certain bonds of the said Missouri, Iowa & Nebraska Railway Company; that thereafter, default having been made in the payment of the interest upon said bonds, and in accordance with the terms, stipulations, and covenants in said mortgage, by a proper proceeding in that behalf against the said Missouri, Iowa & Nebraska Railway Company by the said trustee in the circuit court of the United States for the eastern division of the southern district of Iowa, such proceedings were had as that the equity of redemption of the said mortgagor in said mortgaged property was thereby foreclosed, and pursuant to said decree in that behalf the said property was sold on the — day of ——, 1886,
132 at which sale Morris K. Jesup and Henry C. Thacher, as a committee of the holders of said bonds so secured by said mortgage, became the purchasers of said property; that thereafter, for a good and valuable consideration, the said Jesup and Thacher conveyed the premises, property, and franchises aforesaid to your orator, and thereafter, on or about the 3rd day of December, 1886, in pursuance of the said purchase and decree of said circuit court, your orator, having paid the purchase price agreed to be paid said Jesup and Thacher by order of the said United States circuit court on said last-named date, delivered possession of said railway and franchises to your orator, since which time it has been and still is the owner in possession of and operating the said railway property, as under the laws of the States of Iowa and Missouri it has authority so to do.

So that your orator showeth unto your honors that by virtue of the decree, foreclosure, and sale as aforesaid the said Missouri, Iowa & Nebraska Railway Company became dissolved, and that the said complainants, Charles A. Secor, James F. Secor, John E. Walker, George S. Knox, and Charles H. Mellen, as stockholders in the said Missouri, Iowa & Nebraska Railway Company, ceased thereafter to have any interest in the property of said Missouri, Iowa & Nebraska Railway Company in the said counties of Clark, Scotland, and Schuyler, and that by virtue of said mortgage, decree, and foreclosure sale all of the title in and to said property has become vested in your orator.

Your orator further represents and shows that Benjamin F. Bourn is now the collector of revenue for the county of Scotland, and that R. N. Thompson, O. A. Barnes, and Jas. M. Clark are the county justices of the said county of Scotland, and that Nicholas T. Roberts is now the collector of revenue for the county of
133 Schuyler, and that Mr. Logan, J. J. Hall, and Timothy G. Neely are the justices of the county court of Schuyler county, and that O. S. Callahan is now the collector of revenue for the county of Clark, and that J. E. Todd, Charles Seyb, and George Harter are the county justices of the county of Clark.

Your orator would further respectfully show, by way of supplement, that Benjamin F. Bourn, who, at the time of the institution of this suit and the rendition of the decree herein, was one of the judges of the county court of Scotland county, but who is now collector of the revenue for said county, did, on the — day of November, 1889, institute in the circuit court within and for the said county of Scotland a suit against your orator, whereby he sought, as such collector of revenue, to enforce as a lien upon and against the said property of your orator in said county taxes alleged to have been assessed and levied against the said Missouri, Iowa & Nebraska Railway Company for the years 1876, 1877, 1878, 1880, 1881, and 1882, which said alleged taxes in the aggregate amount to the sum of nineteen thousand thirty-three dollars and twenty-seven cents ($19,033.27), a certified copy of the petition in which suit is hereto attached and made part hereof and to which your orator prays leave to refer as fully as if the same was set forth herein *in extenso*.

Your orator further shows that the said Benjamin F. Bourn, as collector aforesaid, on the — day of November, 1889, instituted another suit against your orator whereby he seeks to subject this defendant's property so formerly owned by the said Missouri, Iowa & Nebraska Railway Company to certain taxes for the years 1872, 1873, 1874, and 1875, alleged to have been levied and assessed against said property while so owned by the said Missouri,
Iowa & Nebraska Railway Company. Said alleged taxes
134 amount to the sum of twenty-nine thousand two hundred and eighty-two dollars and seventy-nine cents ($29,282.79), a certified copy of the petition in which suit is filed as an exhibit hereto, to which your orator prays reference as fully as if the same was set forth *in extenso* herein.

Your orator further shows that the said Benjamin F. Bourn, as

collector aforesaid, did, on the — day of January, 1890, institute another suit against your orator whereby he seeks to subject this defendant's property so formerly owned by the said Missouri, Iowa & Nebraska Railway Company to certain taxes for the year 1887, alleged to have been levied and assessed against said property, which said alleged taxes amount to the sum of three thousand three hundred and thirty-seven dollars and sixty cents ($3,337.60), a certified copy of the petition in which suit is filed as an exhibit hereto, to which your orator prays reference as fully as if the same was set forth *in extenso* herein.

Your orator further shows that each of said suits so instituted by said Benjamin F. Bourn is in violation and contempt of the said decree entered as hereinbefore stated. To the end, therefore, that the said suit and proceedings may stand and be revived against the said several counties, the said several county courts, and the said several county judges and collectors of revenue in the name of your orator and be in the same plight, state, and condition as the same were at the time of the dissolution of the said Missouri, Iowa & Nebraska Railway Company and of the abatement of the interest of the complainants herein in said Missouri, Iowa & Nebraska Railway Company as stockholders, and that plaintiff may have the benefit thereof, or that the said defendants may show cause why the said suit and proceedings should not be so revived, and that the same may be revived accordingly, and that the said
135 Benjamin F. Bourn be cited to appear and show cause why he shall not be punished for contempt in so instituting said suits in violation and disregard of said *suits in violation and disregard of said* decree as aforesaid, and for such other and further relief in the premises as may seem meet and proper—

May it please your honors to grant unto your orator a writ of subpœna or other proper process, to be directed to the said defendants, The County of Scotland, The County of Schuyler, and The County of Clark, The County Courts of said Counties, and William Logan, J. J. Hall, and Timothy Neely, justices of the county court, and Nicholas T. Roberts, collector of the county of Schuyler, and R. N. Thompson, O. A. Barnes, and Jas. M. Clark, justices of the county court of Scotland, and Benjamin F. Bourn, collector for the said county of Scotland; and to J. E. Todd, Charles Seyb, and George Harter, justices of the county court of Clark county, and O. S. Callahan, collector of revenue for the county of Clark, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be named, to be and appear before this honorable court and then and there severally to show cause, if any they can, why the said suit and proceedings therein had should not stand and be revived and be in the same plight and condition as the same were at the time of the abatement thereof; and, further, to stand and abide such order and decree in the premises as — your honors shall seem meet.

And may it please your honors to grant a citation to the said Benjamin F. Bourn, commanding him, at a short day to be named and under penalty, to appear and show cause, if any he has, why he

should not be punished for contempt as aforesaid, and to abide such order and directions as to your honors may seem meet; and your orator shall ever pray.

136 F. T. HUGHES & H. S. PRIEST,
Solicitors for Complainant.

STATE OF IOWA, }
County of Lee, } ss:

F. T. Hughes, being duly sworn, deposes and says that he is president of the complainant company herein in the foregoing bill named, and has read the same and knows the contents thereof, and that the same is true, as he verily believes.

F. T. HUGHES.

Subscribed and sworn to before me this 17th day of Feb., 1890.

JAMES C. DAVIS,
[SEAL.] *Notary Public.*

Said Exhibit Petition in case of Benjamin F. Bourn, collector, *vs.* Keokuk and Western Railroad Company, first above referred to, is in words and figures following:

In the Circuit Court, February Term, 1890.

STATE OF MISSOURI, }
County of Scotland, } ss:

THE STATE OF MISSOURI at the Relation and to the use of BENJ. F. BOURN, Collector of the Revenue of Scotland County, Missouri, Plaintiff,

against

THE KEOKUK AND WESTERN RAILROAD COMPANY, a Corporation, Defendant.

137 *Petition for Taxes.*

The State of Missouri, suing at the relation and to the use of the collector of the revenue within and for Scotland county, alleges that Benj. F. Bourn is the legally qualified and acting collector of the revenue within and for the county and State aforesaid; that defendant is a corporation organized and existing according to law; that on or about the 3d day of May, 1870, by virtue of an act of the General Assembly of the State of Missouri entitled An act to authorize the consolidation of railroad companies in this State with companies owning connecting railroads in adjoining States, approved March 2nd, 1869, a railroad corporation of this State, existing according to law, called the Alexandria and Nebraska City Railroad Company, duly and legally consolidated with a similar railroad corporation of the State of Iowa, called the Iowa Southern Railway Company, thus forming a new corporation called the Missouri, Iowa and Nebraska Railway Company, the articles of consolidation of which two first-named corporations were filed with the

secretary of state of the State of Missouri on the 10th day of May, 1870, and a copy of which is herewith filed as an exhibit in this cause and marked A.

That on or about the first day of June, 1870, until the 3d day of December, 1886, the said Missouri, Iowa and Nebraska Railway Company was the owner and had control of twenty-two and one-half miles of railroad, including road-bed, right of way, superstructure, bridges, depots, water tanks, stationary engines, outhouses, buildings, side tracks, cattle yards, rolling stock, locomotives, cars, &c., of a line of railroad entering the county of Scotland on its east side, near the southeast corner of section one, in township sixty-five north, range ten west, running thence in a generally
138 west and little northerly direction so as to pass through sections one, two, three, four, the southeast corner of five, and through eight and seven, in said 65, 10; thence through 12, 11, 10, 9, 8, 7, including the city of Memphis, all in sixty-five, eleven; thence through 12, the northeast corner of 11, through 2, 3, 4, 5, 6, in township 65, range 12; thence through the northeast corner of section one, township 65, range 13; thence through 36, 35, & 34, township 66, range thirteen, where it leaves the said county on its west line, all of which above-described line of railroad is located in the said county of Scotland, and was built and there erected on a right of way procured by the said Missouri, Iowa and Nebraska Railway Company after the 3d day of May, 1870, as shown by the records of deeds of right of way now of record in the recorder's office of said county, and which said railroad property was then and there subject to taxation from the date of its erection as a railroad until the present time for State, county, school, and other purposes; that there was legally assessed and levied against such property for the year ending August or June, 1876, for State, county, school, and other municipal purposes, the aggregate sum of nineteen hundred and ninety-one and $\frac{20}{100}$ dollars; for the year ending August or June, 1877, the sum of two thousand eight hundred and sixty-six and $\frac{49}{100}$ dollars; for the year ending August or June, 1878, the sum of two thousand eight hundred and sixty-three and $\frac{51}{100}$ dollars; for the year ending Aug. or June, 1880, the sum of two thousand nine hundred and twenty-five and $\frac{88}{100}$ dollars; for the year ending Aug. or June, 1881, the sum of two thousand seven hundred and forty-four and $\frac{62}{100}$ dollars, and for the year ending Aug. or June, 1882, the sum of two thousand eight hundred and fifteen dollars; that in addition to the aforesaid taxes there were levied on lot twenty-two, of block
139 five, of which the said Missouri, Iowa and Nebraska Railroad Company was the owner, in the town of Arbela, in said county, for the years 1882 & 1883, an aggregate tax of 25 cents; for 1886, 28 cents; for 1887, 56 cents, and on lots seven, eight, and nine, in block five, in the town of Granger, in said county, for 1879, 17 cents; for 1880, 40 cents; for 1884, 84.60 *dollars;* for 1885, six and $\frac{20}{100}$ dollars; for 1886, one and $\frac{585}{100}$ —; for 1887, two and $\frac{35}{100}$, and on the north half of lot nine, in Oak Ridge addition to the city of Memphis, in said county, for 1878, two and $\frac{13}{100}$ dollars; for 1881, six and $\frac{65}{100}$ dollars; for 1885, six and $\frac{80}{100}$ dollars; for 1886, four and $\frac{70}{100}$ dol-

lars; for 1887, seven dollars, and on the south 30 feet of lot ten, in said addition to Memphis, for 1886, seventy cents, and for 1887, one and $\frac{50}{100}$ dollars.

That of the taxes so assessed and levied there is now due and unpaid for State purposes for the year 1876 the sum of five hundred and eleven and $\frac{80}{100}$ dollars; for 1877, five hundred and eleven $\frac{80}{100}$ dollars; for 1878, five hundred and eleven and $\frac{80}{100}$ dollars; for 1880, the sum of five hundred and eleven and $\frac{90}{100}$ dollars; for 1881, five hundred and twelve and $\frac{62}{100}$ dollars; and for 1882, the sum of five hundred and eleven and $\frac{85}{100}$ dollars; for 1879, on said lands, six cents; for 1884, eighty cents; for 1885, one $\frac{60}{100}$ dollars; for 1886, fifty-two cents; and for 1887, one and $\frac{32}{100}$ dollars.

For county purposes for the year 1876, on said railroad, seven hundred and sixty-seven and $\frac{73}{100}$ dollars; for the year 1877, one thousand seven hundred and seventeen and $\frac{37}{100}$ dollars; for the year 1878, one thousand seven hundred and seventy-eight and $\frac{54}{100}$ dollars; for the year 1880, the sum of one thousand six hundred and eighty-four and $\frac{72}{100}$ dollars; for the year 1881, one thou-
140 sand six hundred and ninety-five and $\frac{39}{100}$ dollars, and for the year 1882, one thousand six hundred and sixty-three and $\frac{41}{100}$ dollars, and on the said lands for 1879, nine cents; for 1880, twenty-six cents; for 1881, two and $\frac{25}{100}$ dollars; for 1882, thirteen cents; for 1884, one and $\frac{60}{100}$ dollars; for 1885, five and $\frac{60}{100}$ dollars; for 1886, ninety-eight cents, and for 1887, twenty-seven cents; for school purposes in said county, the sum of five hundred and eighty-eight and $\frac{59}{100}$ dollars for the year 1876 on said railroad; for 1877, four hundred and ninety-nine $\frac{2}{100}$ dollars; for 1878, four hundred and eight'-six and $\frac{23}{100}$ dollars; for 1880, the sum of seven hundred and twenty-nine and $\frac{34}{100}$ dollars; for 1881, five hundred and thirty-seven and $\frac{41}{100}$ dollars, and for 1882, six hundred and thirty-nine and $\frac{77}{100}$ dollars, and on said lands the sum of two cents for 1879, six cents for 1880, one and $\frac{60}{100}$ dollars for 1881, six cents 1882 & '3, two and $\frac{20}{100}$ dollars for 1884, four and $\frac{80}{100}$ dollars for 1885, three and $\frac{18}{100}$ dollars for 1886, and two and $\frac{93}{100}$ dollars for 1887.

For city, town, and other municipal purposes on said railroad for 1876, one hundred and twenty-three and $\frac{17}{100}$ dollars; for 1877, one hundred and twenty-eight and $\frac{39}{100}$ dollars; for 1878, eighty-seven and twenty-four one-hundredths dollars, and on said lands in Oak Ridge addition to Memphis for 1878, two and $\frac{13}{100}$ dollars; for 1881, two dollars; for 1885, one dollar, and for 1886, fifty-seven cents, amounting in the aggregate to the sum of sixteen thousand two hundred and fifty-two and $\frac{39}{100}$ dollars, which sum the defendant has failed to pay as required by law.

That plaintiff is entitled to recover of defendant a penalty of three thousand and eighty-six and $\frac{49}{100}$ dollars and a commission of two hundred and three and $\frac{11}{100}$ dollars, said penalty to be augmented at the rate of one per centum per month on the original levy
141 for the taxes of 1876 until the same shall be paid on said railroad; and for 1877, a penalty of four thousand and ninety-nine and $\frac{5}{100}$ dollars and a commission of two hundred and seventy-eight and $\frac{62}{100}$ dollars; and for 1878, a penalty of three thousand

seven hundred and fifty-one and $\frac{58}{100}$ dollars and a commission of two hundred and sixty-four and $\frac{61}{100}$ dollars; and for 1880, a penalty of three thousand one hundred and thirty & $\frac{60}{100}$ dollars and a commission of two hundred and forty-two and $\frac{26}{100}$ dollars; and for 1881, a penalty of two thousand six hundred and seven and $\frac{38}{100}$ dollars and a commission of two hundred and fourteen and $\frac{8}{100}$ dollars; and for 1882, a penalty of two thousand three hundred and thirty-six and $\frac{45}{100}$ dollars and a commission of two hundred and six and $\frac{6}{100}$ dollars, and on said lands clerk's fees amounting to two dollars and ten cents, penalties amounting to twenty-one and $\frac{63}{100}$ dollars, and commissions amounting to two and $\frac{87}{100}$ dollars.

Plaintiff further says that the back-tax bills herewith filed, marked B, will more fully show the foregoing facts, and he prays to refer to same as though herein set out in full as a part of this petition.

Plaintiff further says that the taxes so assessed and levied are, by virtue of the laws of this State, a prior lien on said road-bed and real estate and other property.

That after the aforesaid levy of taxes the defendant, The Keokuk and Western Railroad Company, on or about the month of December, 1886, purchased said property of the Missouri, Iowa and Nebraska Railway Company and took possession of the same, subject to said lien, and now owns and controls said property and operates it as a railroad, except that the lots of ground herein named are not necessary to said company as railroad property.

142 Wherefore plaintiff prays judgment for the sum of sixteen thousand two hundred and fifty-two dollars and 39 cents, to be augmented by one per centum per month until paid, and the penalty thereon, now amounting to the sum of nineteen thousand and thirty-three and $\frac{27}{100}$ dollars, and commissions, amounting to the sum of one thousand four hundred and eleven and $\frac{61}{100}$ dollars, and clerk's fees, amounting to two dollars and ten cents, and for a reasonable attorney's fee and costs of suit; that the same be declared a lien in favor of the State of Missouri, and that said lien be enforced and said real estate and road-bed and other property, or so much thereof as may be necessary, be sold to satisfy said judgment and costs, and that a special *fieri facias* be issued thereon against said property.

BENJ. F. BOURN, *Collector*,
By JOHN C. MOORE,
Prosecuting Attorney.

STATE OF MISSOURI, } ss:
County of Scotland, }

I, C. F. Sanders, clerk of the circuit court in and for said county of Scotland, do hereby certify that the foregoing is a true copy of the original petition of plaintiff now on file in my office in the above-entitled cause.

In witness whereof I have hereunto set my hand as clerk
[SEAL.] and affixed the seal of said court, at my office, in Memphis, this 8 day of November, 1889.

C. F. SANDERS, *Clerk*,
By CHAS. L. MOORE,
Deputy Clerk.

STATE OF MISSOURI, } ss:
County of Scotland, }

143 The State of Missouri to the sheriff of Scotland county, Greeting:

We command you to summon the Keokuk and Western Railroad Company, a corporation, to be and appear in the circuit court of Scotland county, before the judge thereof, on the first day of the next term of said court, to be begun and held at the court-house, in the city of Memphis, in Scotland county, on the first Monday in February, 1890, it being the second day of February, A. D. 1890, to answer the petition of the State of Missouri *ex rel.* Benj. F. Bourn, collector of Scotland county, Missouri; and have you then and there this writ, with the manner in which you executed the same.

In witness whereof I, C. F. Sanders, clerk of the said court, hereunto set my hand and affix the seal of said court, at my office, in Memphis, this the eighth day of November, A. D. 1889.

[SEAL.]

C. F. SANDERS, *Clerk*,
By CHAS. L. MOORE,
Deputy Clerk.

STATE OF MISSOURI, } ss:
County of Scotland, }

I, C. F. Sanders, clerk of the circuit court in and for said county of Scotland, do hereby certify that the foregoing is a true copy of the original writ of summons issued from said court in the cause therein mentioned.

In witness whereof I have hereunto set my hand as clerk and affixed the seal of said court, at my office, in Memphis, this 8 day of November, 1889.

[SEAL.]

C. F. SANDERS, *Clerk*,
By CHAS. L. MOORE,
Deputy Clerk.

144 Said Exhibit Petition in case of Benjamin F. Bourn, collector, *vs.* Keokuk and Western Railroad Company, next referred to, is in words and figures following, to wit:

STATE OF MISSOURI, } ss:
County of Scotland, }

In the Circuit Court, February Term, 1890.

THE STATE OF MISSOURI at the Relation and to the Use of BENJ. F. BOURN, Collector of the Revenue of Scotland County, Missouri, Plaintiff,

against

THE KEOKUK AND WESTERN RAILROAD COMPANY, a Corporation, Defendant.

Petition for Taxes.

The State of Missouri, suing at the relation and to the use of the

collector of the revenue within and for Scotland county, alleges that Benj. F. Bourn is the legally qualified and acting collector of the revenue within and for the county and State aforesaid; that defendant is a corporation organized and existing according to law; that on or about the — day of December, 1886, defendant became the owner and took possession of a line of railroad twenty-two and one-half miles long, including road-bed, right of way, superstructure, bridges, depots, water tanks, stationary engines, outhouses, buildings, side tracks, cattle guards, rolling stock, locomotives, cars, &c., the said railroad entering the county of Scotland on its east side near the southeast corner of section one, in town-
145 ship sixty-five north, range ten west, running thence in a generally west and little northerly direction so as to pass through sections one, two, three, four, the southeast corner of five, and through eight and seven, in said township and range; thence through sections twelve, eleven, ten, nine, eight, and seven, including the city of Memphis, in township sixty-five north, range eleven west; thence through sections twelve, the northeast corner of eleven, and through two, three, four, five, and six, in township sixty-five north, range twelve west; thence through the northeast corner of sections one, in township sixty-five north, range thirteen west; thence through sections thirty-six, thirty-five, and thirty-four, in township sixty-six north, range thirteen west, where it leaves the said county on its west line; all of which above-described line of railroad is located in the county of Scotland, and which was then and there subject to taxation as a railroad for State, county, school, and other purposes; that there was legally assessed and levied against such property for the year 1887 for State, county, school, and other municipal purposes the aggregate sum of three thousand three hundred and thirty-seven and $\frac{60}{100}$ dollars; that of the taxes so assessed and levied there is now due and unpaid for State purposes four hundred and forty-eight dollars, for county purposes two thousand four hundred and eight dollars, including a judgment tax of one thousand five hundred and sixty-eight dollars, and for school purposes in said county the sum of four hundred and eighty-one and $\frac{60}{100}$ dollars, amounting in the aggregate to the sum of thirty-three hundred and thirty-seven and $\frac{60}{100}$ dollars, which sum the defendant has failed to pay as required by law; that plaintiff is entitled to recover of defendant a penalty of five hundred and seventy-nine & $\frac{48}{100}$ dollars, to be augmented at the rate of one per centum
146 per annum until paid; also a commission of one hundred and fifty-six and $\frac{68}{100}$ dollars.

Plaintiff further says that the back-tax bill herewith filed, marked B, will more fully show the foregoing facts, and he prays to refer to the same as though herein set out in full as a part of this petition.

Plaintiff further says that the taxes so assessed and levied are, by virtue of the laws of this State, a prior lien on said road-bed and real estate and other property.

Wherefore plaintiff prays judgment for the sum of three thousand three hundred and thirty-seven and $\frac{60}{100}$ dollars, to be augmented by one per cent. per month on the original tax levied until paid, and the

penalty therein, now amounting to five hundred and seventy-nine and $\frac{48}{100}$ dollars, and commissions, amounting to one hundred and fifty-six and $\frac{68}{100}$ dollars, and for a reasonable attorney's fee and costs of suit.

That the same be declared a lien in favor of the State of Missouri, and that said lien be enforced and said real estate and roadbed and other property, or so much thereof as may be necessary, be sold to satisfy said judgment and costs, and that a special *fieri facias* be issued thereon against said property.

BENJ. F. BOURN, *Collector*,
By JOHN C. MOORE,
Prosecuting Attorney.

STATE OF MISSOURI, }
County of Scotland, } *ss*:

I, C. F. Sanders, clerk of the circuit court in and for said county of Scotland, do hereby certify that the foregoing is a true
147 copy of the original petition of plaintiff now on file in my office in the above-entitled cause.

In witness whereof I have hereunto set my hand as clerk
[SEAL.] and affixed the seal of said court, at my office, in Memphis, this 31st day of January, 1890.

C. F. SANDERS, *Clerk*,
By CHAS. L. MOORE,
Deputy Clerk.

STATE OF MISSOURI, }
County of Scotland, } *ss*:

The State of Missouri to the sheriff of Scotland county, Greeting:

We command you to summon the Keokuk and Western Railroad Company, a corporation, to be and appear in the circuit court of Scotland county, before the judge thereof, on the first day of the next term of said court, to be begun and held at the court-house, in the city of Memphis, in Scotland county, on the first Monday in August, 1890, it being the 4th day of August, A. D. 1890, to answer the petition of the State of Missouri at the relation and to the use of Benj. F. Bourn, collector of the revenue of Scotland county, Missouri; and have you then and there this writ, with the manner in which you executed the same.

In witness whereof I, C. F. Sanders, clerk of the said court, hereunto set my hand and affix the seal of said court, at my
[SEAL.] office, in Memphis, this the 31st day of January, A. D. 1890.

C. F. SANDERS, *Clerk*,
By CHAS. L. MOORE,
Deputy Clerk.

STATE OF MISSOURI, }
County of Scotland, } *ss*:

I, C. F. Sanders, clerk of the circuit court in and for said
148 county of Scotland, do hereby certify that the foregoing is a

true copy of the original writ of summons issued from said court in the cause therein mentioned.

In witness whereof I have hereunto set my hand as [SEAL.] clerk and affixed the seal of said court, at my office, in Memphis, this 31st day of January, 1890.

C. F. SANDERS, *Clerk*,
By CHAS. L. MOORE,
Deputy Clerk.

Said Exhibit Petition in case of Benjamin F. Bourn, collector, *vs.* Keokuk and Western Railroad Company, next referred to, is in words and figures following, to wit:

STATE OF MISSOURI, } ss:
County of Scotland, }

In the Circuit Court, February Term, 1890.

THE STATE OF MISSOURI at the Relation and to the Use of BENJ. F. BOURN, Collector of the Revenue of Scotland County, Missouri, Plaintiff,

against

THE KEOKUK AND WESTERN RAILROAD COMPANY, a Corporation, Defendant.

Petition for Taxes.

The State of Missouri, suing at the relation and to the use of the collector of the revenue within and for Scotland county, alleges that Benj. F. Bourn is the legally qualified and acting collector of
149 the revenue within and for the county and State aforesaid; that defendant is a corporation organized and existing according to law; that on or about the 31 day of May, 1870, by virtue of an act of the General Assembly of the State of Missouri entitled An act to authorize the consolidation of railroad companies in the State with companies owning connecting railroads in adjoining States, approved March 2nd, 1869, a railroad corporation of this State, existing according to law, called the Alexandria and Nebraska City Railroad Company, duly and legally consolidated with a similar railroad corporation of the State of Iowa called the Iowa Southern Railway Company, thus forming a new corporation called the Missouri, Iowa and Nebraska Railway Company, the articles of consolidation of which two first-named corporations were filed with the secretary of state of the State of Missouri on the 10th day of May, 1870, a copy of which has heretofore been filed in this court in a cause now pending, entitled the same as this cause and numbered 5648, which cause is for back taxes due upon the property hereinafter described for the year- 1876, 1877, 1878, 1880, 1881, & 1882 and upon some lots of ground therein described; to which articles of consolidation plaintiff prays to refer as though fully set out herein, and that said suit and this action be consolidated into one suit.

That on or about the first day of June, 1870, until the 3d day of December, 1886, the said Missouri, Iowa and Nebraska Railway Company was the owner and had control of twenty-two and one-half miles of railroad, including road-bed, right of way, superstructure, bridges, depots, water tanks, stationary engines, outhouses, buildings, side tracks, cattle yards, rolling stock, locomotives, cars, &c., of a line of railroad entering the county of Scotland on its east side near the southeast corner of section one, in township sixty-five north, range ten west, running thence in a
150 generally west and little northerly direction, so as to pass through sections one, two, three, four, the southeast corner of five, and through eight and seven, in said 65, 10; thence through twelve, eleven, ten, nine, eight, and seven, including the city of Memphis, all in sixty-five, eleven; thence through twelve, the northeast corner of eleven, through two, three, four, five, and six, in township 65, range 12; thence through the northeast corner of section one, in township 65, range 13; thence through thirty-six, thirty-five, and thirty-four, in township 66, range 13, where it leaves the said county on its west line, all of which above-described line of railroad is located in the said county of Scotland and was built and there erected on a right of way procured by the said Missouri, Iowa and Nebraska Railway Company after the 3d day of May, 1870, as shown by the records of deeds of right of way now of record in the recorder's office of said county, and which said railroad property was then and there subject to taxation, from the date of its erection as a railroad until the present time, for State, county, school, and other purposes; that there was legally assessed and levied against such property for the year ending June or August, 1872, for State, county, school, and other municipal purposes, the aggregate sum of four thousand two hundred & sixty-one and $\frac{12}{100}$ dollars; for 1873, the sum of five thousand one hundred and thirty-three and $\frac{50}{100}$ dollars; for the year 1874, the sum of four thousand seven hundred and fifty-nine and $\frac{43}{100}$ dollars, and for the year 1875 the sum of three thousand and seventy-six and $\frac{18}{100}$ dollars, and for 1879 the sum of two thousand and twenty-four & $\frac{94}{100}$ dollars, and for 1881 a judgment tax of one thousand one hundred and fifteen & $\frac{58}{100}$ dollars.

That of the taxes so assessed and levied there is now due
151 and unpaid for State purposes for the year 1872 six hundred and twenty-one & $\frac{51}{100}$ dollars; for 1873, eight hundred and twenty-one & $\frac{75}{100}$ dollars; for 1874, eight hundred and seventeen & $\frac{21}{100}$ dollars; for 1875, seven hundred and seventy-nine & $\frac{31}{100}$ dollars; for 1879, $511.82 *dollars.*

For county purposes for the year 1873, nineteen hundred and seventeen and $\frac{42}{100}$ dollars; for 1874, twenty-four hundred and seven & $\frac{23}{100}$ dollars, and for 1875, nine hundred & seventy-four and $\frac{90}{100}$ dollars; for 1879, nine hundred and ninety-eight & $\frac{40}{100}$ dollars.

For school purposes in said county, the sum of thirteen hundred and sixty-nine and $\frac{59}{100}$ dollars for 1873, thirteen hundred and forty-eight & $\frac{5}{100}$ dollars for 1874, and eleven hundred and sixty & $\frac{80}{100}$ dollars for 1875, & four hundred & nine & $\frac{45}{100}$ dollars for 1879.

For city, town, and other municipal purposes for the year 1872,

two hundred dollars; for the year 1873, two hundred and two and $\frac{99}{100}$ dollars; for the year 1874, one hundred and eighty-six & $\frac{94}{100}$ dollars, and for the year 1875, one hundred and fifty-one and $\frac{50}{100}$ dollars, and for 1879, one hundred and two dollars & sixty-three cents—

Amounting in the aggregate to the sum of twenty thousand three hundred & sixty-seven & $\frac{75}{100}$ dollars, which sum the defendant has failed to pay as required by law.

That plaintiff is entitled to recover of defendant a penalty of two thousand four hundred and eighty-nine & $\frac{17}{100}$ dollars, said penalty to be augmented at the rate of one per cent. per month on the original levy for the taxes of 1872 until the same shall be paid; also a commission of ninety-nine and $\frac{56}{100}$ dollars, and for
152 1873 a penalty of nine thousand eight hundred and four & $\frac{99}{100}$ dollars and a commission of five hundred and ninety-seven and $\frac{74}{100}$ dollars, for 1874 a penalty of eight thousand five hundred and nineteen & $\frac{38}{100}$ dollars and a commission of five hundred and thirty-one and $\frac{16}{100}$ dollars, and for 1875 a penalty of five thousand one hundred and thirty-seven and $\frac{21}{100}$ dollars and a commission of three hundred and twenty-eight & $\frac{57}{100}$ dollars.

Plaintiff further says that the back-tax bills herewith filed, marked B, will more fully show the foregoing facts, and he prays to refer to same as though herein set out in full as a part of this petition, and for 1879 a penalty of two thousand four hundred and six and $\frac{11}{100}$ dollars, and a commission of one hundred and seventy-seven and $\frac{12}{100}$ dollars, and for 1881 a penalty of nine hundred and twenty-five & $\frac{43}{100}$ dollars and a commission of eighty-eight and $\frac{66}{100}$ dollars.

Plaintiff further says that the taxes so assessed and levied are by virtue of the laws of this State a prior lien on said road-bed and real estate and other property.

That after the aforesaid levy of taxes the defendant, The Keokuk and Western Railroad Company, on or about the month of December, 1886, purchased said property of the Missouri, Iowa and Nebraska Railway Company and took possession of the same, subject to said lien, and now owns and controls said property and operates it as a railroad.

Wherefore plaintiff prays judgment for the sum of sixteen thousand nine hundred and twenty-eight and $\frac{14}{100}$ dollars, to be augmented by one per cent. per month until paid, and the penalty thereon, now amounting to the sum of twenty-nine thousand two hundred and eighty-two & $\frac{73}{100}$ dollars, and commissions amounting to the sum of two thousand two hundred and thirty-two and
153 $\frac{50}{100}$ dollars, and for a reasonable attorney's fee and costs of suit; that the same be declared a lien in favor of the State of Missouri, and that said lien be enforced and said real estate and road-bed and other property, or so much thereof as may be necessary, be sold to satisfy said judgment and costs, and that a special *fieri facias* be issued thereon against said property.

BENJ. F. BOURN, *Collector*,
By JOHN C. MOORE,
Prosecuting Attorney.

STATE OF MISSOURI, } ss:
County of Scotland, }

I, C. F. Sanders, clerk of the circuit court in and for said county of Scotland, do hereby certify that the foregoing is a true copy of the original petition of plaintiff now on file in my office in the above-entitled cause.

In witness whereof I have hereunto set my hand as clerk
[SEAL.] and affixed the seal of said court, at my office, in Memphis, this eleventh day of November, 1889.

C. F. SANDERS, *Clerk,*
By CHAS. L. MOORE,
Deputy Clerk.

STATE OF MISSOURI, } ss:
County of Scotland, }

The State of Missouri to the sheriff of Scotland county, Greeting:

We command you to summon the Keokuk and Western Railroad Company to be and appear in the circuit court of Scotland county, before the judge thereof, on the first day of the next term of said court, to be begun and held at the court-house, in the city of Memphis, in Scotland county, on the first Monday in February, 1890, it being the second day of February, A. D. 1890, to answer the peti-
154 tion of The State of Missouri *ex rel.* Benj. F. Bourn, collector of Scotland county, Missouri; and have you then and there this writ, with the manner in which you executed the same.

In witness whereof I, C. F. Sanders, clerk of the said
[SEAL.] court, hereunto set my hand and affix the seal of said court, at my office, in Memphis, this the eleventh day of November, A. D. 1889.

C. F. SANDERS, *Clerk,*
By CHAS. L. MOORE,
Deputy Clerk.

STATE OF MISSOURI, } ss:
County of Scotland, }

I, C. F. Sanders, clerk of the circuit court in and for said county of Scotland, do hereby certify that the foregoing is a true copy of the original writ of summons issued from said court in the cause therein mentioned.

In witness whereof I have hereunto set my hand as
[SEAL.] clerk and affixed the seal of said court, at my office, in Memphis, this eleventh day of November, 1889.

C. F. SANDERS, *Clerk,*
By CHAS. L. MOORE,
Deputy Clerk.

And afterwards, to wit, on the seventh day of March, A. D. 1890, the following further proceedings were had and appear of record in said cause, to wit:

(*Schuyler County et al. Enter Appearance.*)

CHARLES A. SECOR *et al.*, Complainants,
155 *vs.* } 1505.
JAMES K. SINGLETON *et al.*, Defendants.

Now come respondents William Logan, Timothy G. Neely, and John J. Hall, justices of the county court of Schuyler county, by Thomas C. Tadlock, their solicitor, and also comes Nicholas T. Roberts, collector of Schuyler county, by Shelton & Dysart, his solicitors, and enter appearance to the order to show cause entered herein on February 25th, 1890.

156 And afterwards, to wit, on the eleventh day of March, A. D. 1890, there was filed in said cause a demurrer of Scotland County *et al.* to the bill of revivor, in words and figures following, to wit:

(*Demurrer of Scotland County to Bill of Revivor.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri.

CHARLES A. SECOR *et al.*, Complainants,
vs. } Chancery.
JAMES K. SINGLETON *et al.*, Defendants.

In the matter of the application of the Keokuk & Western Railroad Company for revival of decree.

Demurrer to Bill of Revivor.

Respondents for the County of Scotland come now and demur to the bill of revivor heretofore filed herein by the Keokuk & Western Railroad Company, and for cause say:

1st. That complainants' bill of revivor does not on the face of it state facts sufficient to entitle it to be made a party to this action nor, if made a party, to be entitled to a revivor of the decree heretofore rendered herein.

2nd. That it does not show any succession to the rights acquired by the original complainants in said cause.

3d. The bill shows that decree was originally rendered in favor of Secor and his co-complainants and against the Missouri, Iowa & Nebraska Railway Company and these defendants and their predecessors in office, but does not show that the complainant in revivor acquired any rights as successors to any of the parties plaintiffs.

157 4th. The bill shows that the Missouri, Iowa & Nebraska Company was defendant and not an adversary party to the other defendants, and that the present complainant is seeking to be made a party plaintiff instead of a defendant.

5th. The bill shows that if the Keokuk & Western Company is successor to any of the parties to this action it is to the Missouri, Iowa & Nebraska, with whom these defendants had no contest in the original action.

6th. The bill shows that there are other actions pending in other courts of competent jurisdiction to determine between these same parties the same things.

7th. The bill shows that there was no adjudication of any question between the defendants herein in the original decree, but that Secor and others obtained a decree to prevent the county from collecting taxes and to prevent the Missouri, Iowa & Nebraska from paying taxes, but does not show that the company obtained any decree against the county.

JOHN C. MOORE,
Solicitor for Defendants.

STATE OF MISSOURI, } ss:
County of Scotland, }

Personally appeared Robert M. Thomson, Orton A. Barnes, James M. Clark, and Benjamin F. Bourn, defendants herein, who, being duly sworn, on their oaths state that the foregoing demurrer is not interposed for delay.

ROB'T M. THOMSON.
O. A. BARNES.
JAMES M. CLARK.
BEN. F. BOURN.

Subscribed and sworn to before me this 3rd day of March, 1890.
[SEAL.] JAMES P. NESBIT,
County Clerk of Scotland Co., Mo.

158 I hereby certify that I have carefully examined the foregoing demurrer, and in my opinion it is well founded in point of law.

This 3 day of March, 1890.

JOHN C. MOORE,
Of Counsel and Solicitor for Defendants The County of Scotland, Scotland County Court, Robert M. Thomson, Orton A. Barnes, James M. Clark, and Benj. F. Bourn.

And afterwards, to wit, on the seventeenth day of March, A. D. 1890, the following further proceedings were had and appear of record in said cause, to wit:

(*Amendment to Bill of Revivor Filed; Demurrer to Bill of Revivor Filed by Clark County; Demurrer of Scotland County to Bill of Revivor Refiled.*)

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

Now comes the Keokuk & Western R'y Co., by its solicitor, and, by leave of court, files amendment to bill of revivor.

And also come Clark county, Clark county court, J. E. Todd, Charles Seyb, and George Harter, justices of said county court, and O. S. Callahan, collector, and file demurrer to the bill of revivor herein.

And also come Scotland County *et al.*, and, by leave, refile demurrer to bill of revivor.

Said amendment to bill of revivor is in words and figures following, to wit:

(*Amendment to Bill of Revivor.*)

159 In the Circuit Court of the United States, Eastern Division of the Eastern District of Missouri.

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } In Chancery.

Bill of Revivor and Citation by Keokuk & Western Railroad Company.

To the honorable judges of said court:

Your orator comes now and prays leave of court to exhibit and file an amendment to its bill of revivor, filed herein on the — day of ——, 1890, as follows, to wit:

Your orator further respectfully shows, by way of supplement, that defendant Otho S. Callahan, as collector of the revenue of the said county of Clark herein, did, on the 19th day of Feb., 1890, institute a suit against your orator, whereby he seeks to subject this defendant's property, so formerly owned by the said Missouri, Iowa & Nebraska railway, to certain taxes for the years 1879, 1885, 1886, 1887, alleged to have been levied and assessed against said property while so owned by said Missouri, Iowa & Nebraska Railway Company. Said alleged taxes amount to the sum of fifteen thousand six hundred and eighty-four dollars and eighty-one cents ($15,684.81), exclusive of interest, penalties, and costs. A certified copy of the petition in such suit is attached as Exhibit — hereto, to which your orator prays reference as fully as if the same was set out *in extenso* herein.

Your orator would further respectfully show that Nicholas T. Roberts, as collector of the revenue of the said Schuyler county

herein, did, on the 24th day of February, 1890, institute a suit
160 against your orator, whereby he seeks to subject this defendant's property, so formerly owned by the said Missouri, Iowa & Nebraska Railway Company, to certain taxes for the years 1885, 1886, 1887, alleged to have been levied and assessed against said property while so owned by said Missouri, Iowa & Nebraska Railway Company. Said alleged taxes amount to the sum of five thousand one hundred and seventy-three dollars and thirty-nine cents ($5,173.39), exclusive of interest, penalties, and costs. A certified copy of the petition in which such suit is filed is attached as Exhibit — hereto, to which your orator prays reference as fully as if the same was set out *in extenso* herein.

Your orator further shows that each of said suits so instituted by said Otho S. Callahan and Nicholas T. Roberts is in violation and contempt of the said decree entered as hereinbefore stated.

Wherefore your orator prays that the said Otho S. Callahan and Nicholas T. Roberts be cited to appear and show cause why each of them shall not be punished for contempt in so instituting said suits in violation and disregard of said decree as aforesaid, and for such other and further relief in the premises as may seem mete and proper, and for all further relief as prayed for in complainant's bill of revivor herein; and may it please your honors to grant a citation to the said Otho S. Callahan and Nicholas T. Roberts, commanding each of them, at a short day to be named and under a penalty, to appear and show cause, if any they have, why they should not be punished for contempt as aforesaid, and to abide such orders and directions as to your honors may seem mete; and your orator shall ever pray.

H. S. PRIEST &
F. T. HUGHES,
Solicitors for Complainant.

161 STATE OF ——, }
County of ——, } ss:

F. T. Hughes, being duly sworn, on oath states that he is president of the complainant Keokuk & Western Railroad Company, and that he has read the foregoing amendment, and the same is true, as he verily believes.

F. T. HUGHES.

Subscribed and sworn to before me this 17 day of M'ch, 1890.
A. P. SELBY, *Clerk.*

Said Exhibit Copy of Petition in the Case of Otho S. Callahan *vs.* Keokuk & Western Railroad Company, first above referred to, is in words and figures following, to wit:

Petition in Suit for Back Taxes.

STATE OF MISSOURI at the Relation and to the Use of OTHO S. CALLIHAN, Collector of the Revenue of Clark County, in the State of Missouri, Plaintiff,

versus

THE KEOKUK AND WESTERN RAILROAD COMPANY, a Corporation, Defendant.

In the Circuit Court of Clark County, Missouri, April Term, A. D. 1890.

The State of Missouri, suing at the relation and to the use of the collector of the revenue within and for Clark county, alleges that Otho S. Callihan is the legally qualified and acting collector of the revenue within and for the county and State aforesaid; that defendant is a corporation organized and existing according to law.

162 That on or about the — day of December, A. D. 1886, the defendant became and now is the owner of the following railroad property, to wit: The Keokuk and Western railroad, road-bed and right of way, rolling stock, and all other property necessary to the operation thereof, formerly known as the Missouri, Iowa and Nebraska railroad, a line of railroad beginning at the town of Alexandria, in Clark county, Missouri, and extending in a westerly direction across said county through the towns of Wayland, Clark City, Kahoka, Medill, Ashton, and Luray, in said county, to the western line of said county; thence in a northwesterly direction through Scotland and Schuyler counties, in the State of Missouri; thence to the town of Centreville, in the State of Iowa, which was then and there subject to taxation for State, county, school, and other purposes; that there was legally assessed and levied against such property, as the property of the Missouri, Iowa and Nebraska Railroad Company, for the year 1879, for State, county, school, and other municipal purposes, the aggregate sum of two thousand nine hundred eleven and $\frac{85}{100}$ dollars; that of the taxes so assessed and levied there is now due and unpaid—

For State purposes, the sum of six hundred forty-seven and $\frac{6}{100}$ dollars.

For county purposes, the sum of eight hundred eight and $\frac{82}{100}$ dollars.

For school purposes in said county, the sum of eight hundred eight and $\frac{82}{100}$ dollars.

For railroad indebtedness purposes, the sum of six hundred forty-seven and $\frac{5}{100}$ dollars, amounting in the aggregate to the sum of two thousand nine hundred eleven and $\frac{75}{100}$ dollars, which sum the defendant has failed to pay, as required by law.

163 That plaintiff is entitled to recover of defendant a penalty of two thousand nine hundred and eight and $\frac{27}{100}$ dollars on the amount so due and unpaid from the first day of January, 1880, until the same shall be paid.

Plaintiff further says that the taxes so assessed and levied are by virtue of the laws of this State a prior lien on the road-bed and real estate and other property.

Wherefore plaintiff prays judgment for the said sum of five thousand eight hundred ninety-two and $\frac{2}{100}$ dollars and the penalty thereon until the same shall be paid, and for a reasonable attorney's fee, and for 2 per cent. for collector's commission and costs of suit; that the same be declared a lien in favor of the State of Missouri, and that said lien be enforced and said real estate and road-bed and other property, or so much thereof as may be necessary, be sold to satisfy said judgment and costs, and that a special *fieri facias* be issued thereon against said property.

2nd count. The State of Missouri, suing at the relation and to the use of the collector of revenue of Clark county, alleges that Otho S. Callihan is the legally qualified and acting collector of the revenue within and for the county and State aforesaid; that defendant is a corporation organized and existing according to law.

That on or about the — day of December, A. D. 1886, the defendant became and now is the owner of the following railroad property, to wit:

The Keokuk and Western railroad, road-bed and right of way, rolling stock, and other property necessary to the operation thereof, formerly known as the Missouri, Iowa and Nebraska railroad, beginning at the town of Alexandria, in Clark county, Missouri, and extending in a westerly direction across said county through the towns of Wayland, Clark City, Kahoka, Medill, Ashton, and
164 Luray, in said county, to the western line of said county; thence in a northwesterly direction through Scotland and Schuyler counties, in the State of Missouri; thence to the town of Centreville, in the State of Iowa, which was then and there subject to taxation for State, county, school, and other purposes; that there was legally assessed and levied against said property, as the property of the Missouri, Iowa and Nebraska Railroad Company, for the year 1885, for State, county, school, and other municipal purposes, the aggregate sum of three thousand two and $\frac{70}{100}$ dollars; that of the taxes so assessed and levied there is now due and unpaid—

For State purposes, the sum of four hundred forty-eight and $\frac{80}{100}$ dollars.

For county purposes, the sum of five hundred sixty-one dollars.

For school purposes in said county, the sum of six hundred seventeen and $\frac{10}{100}$ dollars.

For city, town, and other municipal purposes, the sum of eight hundred fourteen and $\frac{10}{100}$ dollars.

For railroad indebtedness purposes, the sum of five hundred sixty-one dollars.

Amounting in the aggregate to the sum of thre- thousand two and $\frac{76}{100}$ dollars, which sum the defendant has failed to pay, as required by law.

That plaintiff is entitled to recover of defendant a penalty of one thousand two hundred seventy-one and $\frac{11}{100}$ dollars on the amount

so due and unpaid from the first day of January, A. D. 1886, until the same shall be paid.

Plaintiff further says that the taxes so assessed and levied are, by virtue of the laws of this State, a prior lien on said road-bed and real estate and other property.

165 Wherefore plaintiff prays judgment for the sum of four thousand two hundred seventy-three and $\frac{81}{100}$ dollars and the penalty thereon until the same shall be paid and for reasonable attorney's fee and two per cent. for the collector's commission and costs of suit; that the same be declared a lien in favor of the State of Missouri, and that said lien be enforced and said real estate and road-bed and other property, or so much thereof as may be necessary, be sold to satisfy said judgment and costs, and that a special *fieri facias* be issued thereon against said property.

3rd count. The State of Missouri, suing at the relation and to the use of the collector of the revenue within and for Clark county, alleges that Otho S. Callihan is the legally qualified and acting collector of the revenue within and for the county and State aforesaid.

That defendant is a corporation organized and existing according to law.

That on or about the — day of December, A. D. 1886, the defendant became and now is the owner of the following railroad property, to wit, the Keokuk and Western railroad, road-bed, and right of way, rolling stock, and all other property necessary to the operation thereof, formerly known as the Missouri, Iowa and Nebraska railroad, a line of railroad beginning at the town of Alexandria, in Clark county, Missouri, and extending in a westerly direction across said county, through the towns of Wayland, Clark City, Kahoka, Medill, Ashton, and Luray, in said county, to the western line of said county; thence in a northwesterly direction through Scotland and Schuyler counties, in the State of Missouri; thence to the town of Centreville, in the State of Iowa, which was then and there subject to taxation for State, county, school, and other purposes; that there was legally assessed and levied

166 against said property for the year 1886, for State, county, school, and other municipal purposes, the aggregate sum of two thousand five hundred sixty-nine and $\frac{20}{100}$ dollars; that of the taxes so assessed and levied there is now due and unpaid—

For State purposes, the sum of five hundred six and $\frac{80}{100}$ dollars;

For county purposes, the sum of six hundred thirty-three and $\frac{50}{100}$ dollars;

For school purposes in said county, the sum of six hundred thirty-three and $\frac{50}{100}$ dollars;

For city, town, and other municipal purposes, the sum of ninety-eight and $\frac{5}{100}$ dollars;

For railroad indebtedness purposes, the sum of six hundred ninety-six and $\frac{85}{100}$ dollars;

Amounting in the aggregate to the sum of two thousand five hundred sixty-nine and $\frac{20}{100}$ dollars, which sum the defendant has failed to pay as required by law.

That plaintiff is entitled to recover of defendant a penalty of four

hundred seventy-nine and $\frac{48}{100}$ dollars on the amount so due and unpaid from the first day of January, 1887, until the same shall be paid.

Plaintiff further says that the taxes so assessed and levied are, by virtue of the laws of this State, a prior lien on said road-bed and real estate and other property.

Wherefore plaintiff prays judgment for the sum of three thousand forty-eight and $\frac{68}{100}$ dollars and the penalty thereon until the same shall be paid and for a reasonable attorney's fee and for two per cent. for collector's commission and costs of suit; that the same be declared a lien in favor of the State of Missouri, and that said lien be enforced and said real estate and road-bed and other property, or so much thereof as may be necessary, be sold to satisfy said judgment and costs, and that a special *fieri facias* be issued thereon against said property.

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4th count. The State of Missouri, suing at the relation and to the use of the collector of the revenue within and for Clark county, alleges that Otho S. Callihan is the legally qualified and acting collector of the revenue within and for the county and State aforesaid; that defendant is a corporation organized and existing according to law.

That on or about the — day of December, A. D. 1886, the defendant became and now is the owner of the following railroad property, to wit:

The Keokuk and Western railroad, road-bed, and right of way, rolling stock, and all other property necessary to the operation thereof, formerly known as the Missouri, Iowa and Nebraska railroad, a line of railroad beginning at the town of Alexandria, in Clark county, Missouri, and extending in a westerly direction across said county through the towns of Wayland, Clark City, Kahoka, Medill, Ashton, and Luray, in said county, to the western line of said county; thence in a northwesterly direction through Scotland and Schuyler counties, in the State of Missouri; thence to the town of Centreville, in the State of Iowa, which was then and there subject to taxation for State, county, school, and other purposes.

That there was legally assessed and levied against such property for the year 1887, for State, county, school, and other municipal purposes, the aggregate sum of two thousand nine hundred forty-nine and $\frac{80}{100}$ dollars.

That of the taxes so assessed and levied there is now due and unpaid—

For State purposes, the sum of five hundred sixty-four and $\frac{80}{100}$ dollars.

For county purposes, the sum of seven hundred and six dollars;

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For school purposes in said county, the sum of eight hundred four and $\frac{84}{100}$ dollars;

For city, town, and other municipal purposes, the sum of ninety-seven and $\frac{60}{100}$ dollars;

For railroad indebtedness purposes, the sum of seven hundred seventy-six and $\frac{60}{100}$ dollars;

Amounting in the aggregate to the sum of two thousand nine hundred forty-nine and $\frac{84}{100}$ dollars, which sum the defendant has failed to pay as required by law.

That plaintiff is entitled to recover of defendant a penalty of six hundred fifty-seven and $\frac{77}{100}$ dollars on the amount so due and unpaid from the first day of January, A. D. 1888, until the same shall be paid.

Plaintiff further says that the taxes so assessed and levied are, by virtue of the laws of this State, a prior lien on said road-bed and real estate and other property.

Wherefore plaintiff prays judgment for the said sum of three thousand six hundred seven and $\frac{61}{100}$ dollars and the penalty thereon until the same shall be paid, and for a reasonable attorney's fee and for two per cent. for the collector's commission and for costs of suit; that the same be declared a lien in favor of the State of Missouri, and that said lien be enforced and said real estate and road-bed and other property, or so much thereof as may be necessary, be sold to satisfy said judgment and costs, and that a special *fieri facias* be issued thereon against said property.

T. L. MONTGOMERY,
Prosecuting Attorney of Clark County, Missouri, Att'y for Plaintiff.

169 *Certificate to Copy of Petition.*

STATE OF MISSOURI, } ss:
County of Clark, }

I do hereby certify that the foregoing is a true copy of the original petition now on file in my office in the above-entitled cause.

Given under my hand and official seal, at office, in the town of Kahoka, in said county, this 19th day of February, 1890.

[SEAL.] B. F. WAGGENER, *Clerk.*

Summons.

STATE OF MISSOURI, } ss:
County of Clark, }

In the Circuit Court.

The State of Missouri to the sheriff of Clark county, Greeting:

We command you to summon the Keokuk and Western Railroad Company, a corporation, if it be found in your county, to appear before our circuit court to be held within and for the county of Clark, at the court-house, in the town of Kahoka, in said county, on the first day of the next term thereof, to be begun and held on the first Monday in April next, A. D. 1890, then and there, before the judge of our said court, to answer the petition of The State of Missouri at the relation and to the use of Otho S. Callihan, collector of the revenue of Clark county, in the State of Missouri (a certified copy of which said petition is hereunto annexed); and have you then and there this writ, with the return of your action thereupon.

Witness my hand as clerk of our said court and the seal thereof. Done at office, in Kahoka, in the county aforesaid, on the 19th day of February, A. D. 1890.

[SEAL.] B. F. WAGGENER, *Clerk.*

Certificate to Copy of Summons.

170 STATE OF MISSOURI, } ss:
County of Clark, }

I do hereby certify that the foregoing is a true copy of the original summons issued in a certain cause in the circuit court of said county, wherein State of Missouri *ex rel.* Otho S. Callihan, plaintiff, and The Keokuk & Western Railroad Co., a corporation, defendant.

Given under my hand and official seal, at office, in the town of Kahoka, county and State aforesaid, on this 19th day of February, A. D. 1890.

[SEAL.] B. F. WAGGENER, *Clerk.*

Said Exhibit Copy of Petition in the Case of Nicholas T. Roberts *vs.* Keokuk & Western Railroad Company, next referred to above, is in words and figures following, to wit:

STATE OF MISSOURI, } ss:
Schuyler County, }

In the Circuit Court, May Term, 1890.

THE STATE OF MISSOURI at the Relation and to the Use of Nicholas T. Roberts, Collector of the Revenue within and for Schuyler County, Plaintiff,

against

THE KEOKUK AND WESTERN RAILWAY COMPANY, Defendant.

The State of Missouri, suing at the relation and to the use of the collector of the revenue within and for Schuyler county, alleges that Nicholas T. Roberts is the legally qualified and acting collector of the revenue within and for the county and State aforesaid;

171 that defendant is a corporation organized and existing according to law; that on or about the — day of ——, 1887, defendant became and was the owner of the following railroad property, to wit: About twenty miles of road-bed, including side tracks and right of way 100 feet wide, passing through Schuyler county from east to west and crossing Fabius, Liberty, Glenwood, and Chariton townships, in said county, together with the depots and depot grounds adjoining thereto at Downing, Lancaster, Glenwood Junction, and Harlan, in Schuyler county, Missouri, all of which was then and there and for fifteen years prior thereto had been subject to taxation for State, county, school, and other purposes; that def't — the owner of said road-bed by purchase at a foreclosure sale in 1887, foreclosing a certain deed of trust given by the Missouri, Iowa and Nebraska Railway Company to the Farmers'

Loan and Trust Company in 187–; that prior to the purchase of said road by defendant the same had been duly assessed for taxation by the State board of equalization of the State of Missouri for the years 1885 and 1886 and 1887, and upon such assessment the proper authorities of Schuyler duly imposed taxes for such purposes and at such rates as was imposed on all other species of property in Schuyler Co.; that the taxes so levied and imposed on the road-bed and other property of def't in Schuyler Co. were a charge and lien thereon at the date of the purchase by def't, and the same is subject to payment thereof; that def't by its purchase aforesaid has become liable for the same; that there was legally assessed and levied against such property for the year ending June 1st, 1885, for State, county, school, and other municipal purposes the aggregate sum of sixteen hundred and fifty-nine and $\frac{93}{100}$ dollars; that of the taxes so assessed and levied for the year 1885 aforesaid there is now due and unpaid for State purposes the sum — $318.00; for county purposes, the sum of $397.50; for county railroad purposes,
172 the sum of $556.50; for payment of what is known as the Clark & Du Bois judgments, the sum of $47.76; for school purposes, the sum of $340.17; making in the aggregate the sum of $1,659.93, with the penalties thereon from Jan'y 1st, 1886, at the rate of 12 % per annum; which sum def't has wholly failed to pay, as required by law.

That there was legally assessed and levied against said property for the year ending Jun- 1st, 1886, for State, county, school, and other municipal purposes, the aggregate sum of $1,556.32; that of the taxes so assessed and levied for said year there is now due and unpaid for State purposes the sum of $358.00; for county purposes, the sum of $447.50; for county railroad indebtedness, the sum of $268.50; for school purposes, the sum of $482.32; amounting in the aggregate for said year to the sum of $1,556.32, together with twelve per cent. interest thereon from January 1st, 1887, as penalty.

Which sum def't has wholly failed to pay, as required by law.

That there was legally assessed and levied against said property for the year ending June 1st, 1887, for State, county, school, and other municipal purposes, the aggregate sum of $1,958.14; that of the taxes so assessed and levied for said year there is now due and unpaid for State purposes the sum of $398.00; for county purposes, the sum of $497.50; for county railroad indebtedness, the sum of $497.50; for Liberty township railroad indebtedness, the sum of $58.20; for school purposes, $506.94; amounting in the aggregate for said year to the sum of $1,958.14, together with twelve per cent. interest thereon from January 1st, 1888, as penalty; which sum defendant has wholly failed to pay, as required by law.

That pl'ff is entitled to recover of def't a penalty on the several sums so due as aforesaid of twelve per cent. per annum,
173 as follows: On the sum of $1,659.93, from January 1st, 1886; on the sum of $1,556.32, from January 1st, 1887, and on the sum of $1,958.14, from January 1st, 1888, until the said several sums shall be paid.

Pl'ff further states that the taxes so assessed and levied are by

virtue of the laws of this State a prior lien on said road-bed and real estate and other property. Wherefore pl'ff prays judgment for the sums so alleged to be due as aforesaid and the penalty thereon until the same shall be paid, and for reasonable attorney's fees and costs of suit; that the same be declared a lien in favor of the State of Missouri, and that said lien be enforced and said real estate and road-bed and other property, or so much thereof as may be necessary, be sold to satisfy said judgment and costs, and that special *fieri facias* be issued thereon against said property.

NICHOLAS T. ROBERTS,
By SHELTON & DYSART, *His Att'ys.*

STATE OF MISSOURI, } *ss:*
County of Schuyler, }

I, D. N. Jewett, clerk of the circuit court in and for said county of Schuyler, do hereby certify that the foregoing is a true copy of the original petition now on file in my office in the above-entitled cause.

In witness whereof I have hereunto set my hand as clerk and affixed the seal of said court this 24th day of Feb'y, A. D. 1890.

[SEAL.] D. N. JEWETT,
Circuit Clerk.

STATE OF MISSOURI, } *ss:*
County of Schuyler, }

In the Circuit Court.

The State of Missouri to the sheriff of Schuyler county, Greeting:

174 We command you to summon the Keokuk and Western Railway Company, if it be found in your county, to appear before our circuit court to be held within and for the county of Schuyler, at the court-house, in the town of Lancaster, in said county, on the first day of the next term thereof, to be begun and held on the 2nd Monday in May next, A. D. 1890, then and there, before the judge of our said court, to answer the petition of the State of Missouri at the relation and to the use of Nicholas T. Roberts, collector of the revenue within and for Schuyler county (a certified copy of which said petition is hereunto annexed); and have you then and there this writ, with the return of your action thereupon.

Witness my hand as clerk of our said court and the seal thereof. Done at office, at Lancaster, Mo., in the county aforesaid, on the 24th day of Feb'y, A. D. 1890.

[SEAL.] D. N. JEWETT,
Circuit Clerk.

STATE OF MISSOURI, } *ss:*
County of Schuyler, }

I, D. N. Jewett, clerk of the circuit court in and for said county of Schuyler, do hereby certify that the foregoing is a true copy of

the original writ of summons issued from said court in the cause therein mentioned.

In witness whereof I have hereunto set my hand as clerk and affixed the seal of said court this 24th day of Feb'y, A. D. 1890.

[SEAL.] D. N. JEWETT,
Circuit Clerk.

And on said last-named day, to wit, on the seventeenth day of March, A. D. 1890, there was filed in said cause a demurrer of Clark county *et al.* to the bill of revivor in words and figures following, to wit:

175 In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri.

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants.

The joint and several demurrer of The County of Clark; J. E. Todd, Charles Seyb, and George Harter, justices of the county court of Clark county, and O. S. Callihan, collector of revenue for the county of Clark, defendants, to the bill of revivor of the Keokuk and Western Railroad Company exhibited against them and other defendants herein.

These defendants, by protestation, not confessing any or all of the matters and things in the complainant's said bill contained to be true in such manner and form as the same *is* therein set forth and alleged, demur to said bill, and for cause of demurrer show:

1st. That the complainants The Keokuk and Western Railroad Company hath not in said bill made or stated such a case as entitles it to the relief prayed for in its said bill or to any relief against these defendants as to the matters contained in its said bill or any of such matters.

Wherefore and for divers other good causes of demurrer appearing in said bill the said defendants demur thereto and hereby demand the judgment of this court whether they shall be compelled to make any further or other answer to the said bill, and pray to be dismissed with their costs and charges in this behalf most wrongfully sustained.

ANDERSON & SCHOFIELD AND
T. L. MONTGOMERY,
Counsel for said Defendants.

I hereby certify that I am solicitor and of counsel for The County of Clark; J. E. Todd, Charles Seyb, and George Harter, justices of the county court of Clark county, and O. S. Callihan, collector of revenue for said county of Clark, defendants in the above-
176 entitled cause, and that in my opinion the foregoing demurrer of said defendants to the bill of revivor of The Keokuk and

Western Railroad Company, complainant, is well founded in point of law and proper to be filed in the above cause.

F. L. SCHOFIELD,
Solicitor and of Counsel for Defendants.

UNITED STATES OF AMERICA,
Eastern District of Missouri, } *ss:*

J. E. Todd, Charles Seyb, George Harter, and O. S. Callihan, being duly sworn, depose and say that the foregoing demurrer is not interposed to delay the cause or any proceedings therein.

[SEAL.] J. E. TODD.
[SEAL.] CHAS. SEYB.
[SEAL.] GEORGE HARTER.
[SEAL.] O. S. CALLIHAN.

Subscribed and sworn to before me this 14th day of March, A. D. 1890.

[SEAL.] D. E. KENNEDY,
Notary Public.

My term expires Dec. 21st, 1892.

And afterwards, to wit, on the eighteenth day of March, A. D. 1890, the following further proceedings were had and appear of record in said cause, to wit:

(*Schuyler County et al. Enter Appearance.*)

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

Now come respondents, Schuyler County and County Court of said County, by Shelton & Dysart and Thomas C. Tadlock, their solicitors, and enter their appearance to the bill of revivor herein.

177 And afterwards, to wit, on the twenty-fifth day of March, A. D. 1890, the following further proceedings were had and appear of record in said cause, to wit:

(*Demurrers to Bill of Revivor Sustained.*)

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

The demurrers of certain respondents to the bill of revivor of the Keokuk & Western Railway Company, heretofore submitted, having been considered by the court, it is now ordered that said demurrers be, and the same are, sustained, with leave to said Keokuk & Western Railway Company until April rules to amend its said bill.

And afterwards, to wit, on the second day of April, A. D. 1890, the following further proceedings were had and appear of record in said cause, to wit:

(*Time to File Amended Bill of Revivor Extended.*)

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

On motion, leave is given the Keokuk & Western Railway Company until May rules to file amended bill of revivor.

And afterwards, to wit, on the twenty-eighth day of April, A. D. 1890, there was filed in said cause a second amendment to the bill of revivor in words and figures following, to wit:

(*Second Amendment to Bill of Revivor.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri.

178 CHAS. A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } In Chancery.

Bill of Revivor and Citation by The Keokuk & Western Railroad Company.

To the honorable judges of said court:

Your orator comes now, and, by leave of court granted April —, 1890, exhibits this its other and further amendment to its bill of revivor and amendment thereto, heretofore filed in this cause, and further represents and shows that after the said Missouri, Iowa & Nebraska Railway Company, in the year 1870, made its said mortgage and bonds of deed of trust, hereafter called 1870 bonds and referred to in your orator's bill of revivor herein, the said railway company having failed to pay the interest on said bonds as the same matured, the said Farmers' Loan & Trust Company, as trustee therein, filed its bill of foreclosure in the circuit court of the United States for the southern district of Iowa, and that thereafter such proceedings were had in said court in said cause that on the — day of ——, 1880, a decree of foreclosure was entered therein for the interest due on said bonds and not paid as aforesaid; that on or about the — day of September, 1880, the said Missouri, Iowa & Nebraska Railway Company leased its property for a term of years to the Wabash, St. Louis & Pacific Railway Company, hereinafter called the Wabash Company, a corporation duly organized and existing under the laws of the State of Missouri and certain other States, having its chief office and place of business in the city of St. Louis, in said State of Missouri. A copy of said lease is hereto attached as Exhibit "A" and made part hereof, and to which your orator prays

leave to refer as fully as if the same was set forth herein *in extenso*.

179 That among other considerations in said lease is was agreed that the said Missouri, Iowa & Nebraska Railway Company should make and execute a certain mortgage or deed of trust to the Mercantile Trust Company of New York, as trustee, to secure certain bonds, to be therein described, which said bonds were, by said agreement, to be guaranteed by the said Wabash Company, the said Missouri, Iowa & Nebraska Railway Company covenanting that it would cause the owners and holders of the said 1870 bonds to accept the said bonds so guaranteed by the said Wabash Company in less numbers per mile of its railway and at a less rate of interest in exchange for and in lieu of the said bonds of 1870 and interest thereon then due, and the said decree of foreclosure in the said United States circuit court was not executed or the railway property sold thereunder.

In pursuance of said lease the said Missouri, Iowa & Nebraska Railway Company did, on the first day of March, 1881, make, execute, and deliver to the said Mercantile Trust Company its said mortgage or deed of trust to secure a series of twenty-two hundred and sixty-nine bonds for one thousand dollars each, bearing interest at the rate of six per cent., which said bonds were duly guaranteed by said Wabash Company according to its said agreement. Said bonds are sometimes called Iowa division bonds, Wabash, St. Louis & Pacific railway. A copy of said mortgage or deed of trust is hereto attached as Exhibit "B" and made part hereof, and to which your orator prays leave to refer the same as if written out *in extenso* herein.

All of the said 1870 bonds were duly exchanged for the said Wabash guaranteed bonds with the exception of seventeen, there being three thousand and twenty-five of the said 1870 bonds of one thousand dollars each, three thousand and nine of same

180 being exchanged for two thousand two hundred and fifty-six of said Wabash bonds. Said Wabash Company paid the interest as it matured and fell due on said bonds until about June, 1884, and the said decree of foreclosure remained unexecuted.

That on the said — day of June, 1884, the said Wabash Company became insolvent and failed to pay the interest on said bonds as agreed and thereby forfeited the said lease.

That thereafter, on or about the — day of ——, 1886, the Farmers' Loan & Trust Company, trustee as aforesaid, duly exhibted its supplemental bill of foreclosure in the circuit court of the United States for the eastern division of the southern district of Iowa, said court having been duly established by act of Congress in the meantime, against the said Missouri, Iowa & Nebraska Railway Company, the said Mercantile Trust Company, the said Wabash Company, and the Humeston & Shenandoah Railroad Company; that, each of said defendants having appeared to said supplemental bill, such proceedings were thereafter had in said court that on the — day of ——, 1886, a final decree of foreclosure was had in said cause *and* foreclosing all rights and claim of redemption of the said

several defendants in the said railway property in the said several mortgages and claims and ordering that the said property and franchises be sold to pay off and satisfy the sum of two million five hundred and ninety thousand three hundred and sixty-nine dollars and sixty cents found to be due on said Wabash guaranteed bonds of date March 1st, 1881, and the further sum of thirty-eight thousand five hundred and twenty-four dollars and ninety cents found to be due on said seventeen 1870 bonds not exchanged as aforesaid. Said decree of foreclosure further provided that upon the confirmation of said sale the defendants Missouri, Iowa & Nebraska Railway Company, Humeston & Shenandoah Railroad Com-
181 pany, and The Mercantile Trust Company should each make, execute, and deliver to the purchaser or purchasers at the said sale proper and suitable deeds or instruments of conveyance of the said mortgaged premises and property, conveying to the said purchaser or purchasers at the said sale all the right, title, and interest of the said defendants of, in, and to the mortgaged premises and every part and parcel thereof. A true copy of said decree of foreclosure is hereto attached as Exhibit "C" and made part hereof, to which your orator prays leave to refer the same as if written out *in extenso* herein.

Your orator further states that said property and franchises were on the — day of ——, 1886, duly sold by one P. T. Lomax, Esq., standing master of said court, pursuant to said decree, at which sale Morris K. Jesup and Henry C. Thacher became the purchasers, as stated in your orator's bill of revivor herein, which sale having been confirmed and the said Jesup and Thacher having conveyed the said property and franchises to your orator, the same were, about the 3d day of December, 1886, by order of the said United States court, turned over to your orator, as before stated; that the said decree, sale, confirmation, and transfer of the said property and franchises to your orator, as herein and heretofore stated, is the same decree, sale, confirmation, and transfer stated in your orator's original bill of revivor herein.

Your orator further states that thereafter, on or about the — day of ——, 188–, in pursuance of said decree, the said Missouri, Iowa & Nebraska Railway Company and the said Mercantile Trust Company did each make, execute, and deliver to the said Morris K. Jesup and Henry C. Thacher, as such purchasing committee, their respective deeds of conveyance, conveying to them all
182 their right, title, and interest of, in, and to the said railway property and every part and parcel thereof, and the said Jesup and Thacher did thereafter, for a valuable consideration and in further execution of their said trust, convey by good and sufficient deed to your orator all the right, title, and interest of either or both of them acquired by such foreclosure or conveyance from the said Missouri, Iowa & Nebraska Railway Company and the said Mercantile Trust Company as aforesaid, and that your orator from and after the date of the said decree of foreclosure and the said sale and confirmation was and ever since has been the equitable and legal owner of all the right, title, and interest as grantee of the said Mis-

souri, Iowa & Nebraska Railway Company transferred by the said decree of foreclosure and the said mortgages or deeds of trust so foreclosed. The particulars of all of which will more fully appear upon inspection of the respective deeds of conveyance, which your orator will produce when and where this honorable court may direct.

Your orator further shows to the court that the said Mercantile Trust Company mortgage or deed of trust was made after the original injunction proceedings herein were commenced; that by the title through the foreclosure of same, as before stated, as well as through the various deeds of conveyance herein and heretofore set forth, your orator is now entiled to all the rights and privileges in and to the said injunction decree and to have the same revived and enforced against any person or persons who may violate the same to the same extent as belonged to the said Missouri, Iowa & Nebraska Railway Company or any of the other parties to said proceedings.

Wherefore your orator prays the same relief it has heretofore prayed and for such other and further relief in the premises as to your honors may seem me-te.

H. S. PRIEST & F. T. HUGHES,
Solicitors for Complainant.

183 STATE OF MISSOURI, } ss:
City of St. Louis, }

F. T. Hughes, being duly sworn, on oath says he is president and counsel of complainant Keokuk & Western Railroad Company and knows the contents of foregoing amendment, and statements therein contained are true, as he verily believes.

F. T. HUGHES.

Subscribed and sworn to by F. T. Hughes this 28th of April, 1890. Commission expires Nov. 1, 1893.

[SEAL.] B. C. WINSTON,
Notary Public, City of St. Louis, Mo.

184 Said Exhibit A, above referred to, is in words and figures following, to wit:

EXHIBIT "A."

This indenture of lease, made this 3d day of September, A. D. 1880, by and between the Missouri, Iowa and Nebraska Railway Company, a consolidated corporation of Iowa and Missouri, of the first part, — the Wabash, St. Louis and Pacific Railway Company, a consolidated corporation of Ohio, Indiana, Illinois, and Missouri, of the second part, witnesseth:

The party of the first part, in pursuance of a resolution of its board of directors adopted on the — day of ——, A. D. 1880, and the further authorization of its stockholders thereto, and in consideration of the covenants and agreements on the part of the party of the second part hereinafter contained, does hereby let, demise, and lease unto the party of the second part, its successors and as-

signs, for the term of ninety-nine years from this date, renewable in like periods forever at the option of the party of the second part; the railroad of the party of the first part extending from the Mississippi river, at Keokuk, Iowa, westerly through and across the States of Iowa and Missouri to a point on the Missouri river opposite Brownsville, Nebraska, as now owned, constructed, or used or as at any time hereafter the said railroad may be owned, constructed, or used by the said party of the first part, together with all embankments, bridges, turnouts, side tracks, water tanks and fixtures, shops, engine or other houses, turn-tables, engines, cars, machinery, tools, rolling stock, lots, lands, buildings, offices, and all things, real or personal, now owned or used or that may hereafter be owned or used by the said party of the first part in connection with the said railroad, and everything appertaining thereto, and all the
185 franchises, powers, privileges, and chartered or other rights of the said party of the first part, so far as the same may be needful or advantageous to the said party of the second part, as lessee of the premises above described, provided that the rights of the party of the first part to any subscription or promise payable on the completion of any part of its railroad is expressly reserved from the above:

To have and to hold the said demised railway and property, real and personal, and franchises, as above provided, unto the said party of the second part, its successors and assigns, to and for the full end and time of ninety-nine years from and after the date of these presents and any and all renewals thereof forever, at the option of the party of the second part, as above set forth.

And in consideration of the premises the party of the second part hereby covenants that it will maintain and operate the said railroad, fully maintaining the present equipment thereof and any further equipment which may be supplied at the cost of the party of the second part, keeping the said railroad and equipment in good condition and repair for the full term of this lease and of any renewal thereof, and will indemnify and save harmless the said party of the first part from and against all damages and liabilities whatever in connection with the operation of the same, and will keep full and accurate accounts of all its earnings from the same, which shall at all times be open to inspection by the duly constituted agents or committees of the party of the first part.

The party of the second part further covenants that it will, in each year while said property is held under this lease, set aside from the gross earnings a sum equal to thirty per cent. thereof, and will apply the same as follows:

First. To the payment of all lawful taxes and assessments levied on said property.

186 Second. To the payment of the interest on the mortgage bonds of the party of the first part under its deed of trust or mortgage, dated June 1st, 1870, and the supplementary indenture of March 1st, 1875.

Third. To the party of the first part, on the first days of April and October in each year, the balance of said thirty per cent. ac-

cruing from the earnings of said property for six months preceding the first days of March and September in each year.

Fourth. The party of the second part moreover expressly guarantees that the interest paid by it upon the mortgage bonds aforesaid of said first party shall not be less than at the rate of four and one-half per cent. per annum upon the par value of said bonds, which said first party stipulates does not exceed three millions twenty-five thousand dollars.

The interest aforesaid shall be paid at the office of the agency of the said second party in the city of New York on the first days of April and October in each year, until such time as said bonds shall have been retired by foreclosure or exchange, as hereinafter referred to; but in no case shall this or any of the covenants herein be binding on said second party after it shall, for any cause other than its own acts, be divested of possession under this lease.

It is further mutually declared that this lease is made and accepted in furtherance of an agreement February 12th, A. D. 1880, by and between the first and second parties hereto and the trustees of the holders of the mortgage bonds of the first party hereto, the rental above stipulated of four and one-half per cent. on said bonds of said first party, which have been issued to the amount of twenty thousand dollars per mile of completed road, being
187 an equivalent of six per cent. on the fifteen thousand dollars per mile of said railroad in bonds of said first party hereafter to be issued in exchange therefor, as in said agreement provided.

It being found impracticable for said first party to complete its railroad as in said agreement provided, the parties above named have procured the incorporation of a railroad company of Iowa known as the Iowa, Missouri and Nebraska Railroad Company, to build and have a line of railroad from Prairieville, Iowa, to which point the first party's railroad has been completed, to and beyond the junction with the railroad of the second party hereto, as specified in said agreement.

The second party hereby covenants that the completion of the railroad of the Iowa, Missouri and Nebraska Railroad Company to such point of junction shall be accepted by it in lieu of the completion of the railroad of the first party hereto, as stipulated for in said agreement, it being mutually stipulated by the parties hereto that — shall continue otherwise in full force and unaffected.

The second party further covenants that in the event that the Iowa, Missouri and Nebraska railroad above mentioned shall be completed to a junction as aforesaid before the exchange of stock and bonds provided for in said agreement shall be made, then the second party will thereafter pay, in addition to the rental hereinbefore provided for the holders of the bonds and stock of said first party, such sum in lieu of dividends as in and by said agreement it is provided shall be paid.

It is further expressly understood and agreed that the execution and acceptance of this lease shall constitute the second party the successor and assign of the first party as lessee of the Centerville, Moravia and Albia railroad, and as such having all the rights and

obligations of such lessee, the said second party particularly
188 assuming to pay, during such time as the Centreville, Moravia and Albia railroad shall remain in its possession and control, the interest guaranteed by the first party upon four hundred first-mortgage bonds as part of the consideration for said lease.

The second party covenants that upon the presentation to it by the owner thereof of any receipt from the Farmers' Loan and Trust Company for the said mortgage bonds of the Missouri, Iowa and Nebraska Railroad Company given by said Farmers' Loan and Trust Company in pursuance of the plan of reorganization of said company, whereby the three trustees who signed the said agreement of February 12th, 1880, were appointed, it will endorse upon or attach to said receipt the following:

"The Missouri, Iowa and Nebraska railroad has been leased to the Wabash, St. Louis and Pacific Railway Company upon terms which provide for the exchange of bonds covered by the within certificate at the rate of fifteen thousand dollars six per cent. bonds and five thousand dollars preferred stock of said Wabash, St. Louis and Pacific Railway Company for every twenty thousand dollars of said bonds, such exchange to be made only after the title of the lessee therein is perfected as provided for in said agreement.

"Pending the steps necessary to legalize such exchange, the Wabash, St. Louis and Pacific Railway Company is to pay to the holder hereof interest at the rate of four and one-half per cent. on the par value of the bonds covered by this certificate.

"Whenever the Iowa, Missouri and Nebraska railroad shall have been constructed and the cars running thereon from Prairieville, Iowa, to a junction with the said Wabash, St. Louis and Pacific railway, so that said railway shall have a benefit of a continuous line from Keokuk, Iowa, to the junction aforesaid, then from that date, during its tenure under the said lease, the Wabash, St.
189 Louis and Pacific Railway Company shall pay as further rental such further sum as shall equal the dividends declared by said Wabash, St. Louis and Pacific Railway Company upon such an amount of the preferred stock above referred to as the holder thereof will by the terms of said lease be entitled to receive, the interest aforesaid to be paid at the office or agency of said Wabash, St. Louis and Pacific Railway Company, in the city of New York, on the first days of April and October in each year, commencing April 1st, 1881."

The second party further covenants that upon the deposit of certificates for any number of shares of the common stock of the Missouri, Iowa and Nebraska Railway Company by any stockholder with A. L. Hopkins as trustee, accompanied by a power of attorney to said trustee to hold and vote said stock, the said trustee shall issue to said stockholder a receipt for the same in pursuance of this agreement, and to the effect that when the party of the second part shall become vested with a complete title to the property of the party of the first part it will issue to said stockholder in exchange for the stock so deposited the common stock of the said Wabash,

St. Louis and Pacific Railway Company in the ratio that five thousand dollars of its said stock per mile on the line of the said Missouri, Iowa and Nebraska railway, from Keokuk to Prairieville, Iowa (being 148½ miles), shall bear to the total issue of the stock of the party of the first part, and that meantime if the railroad of the Iowa, Missouri and Nebraska Railroad Company (now in process of construction) shall be completed from Prairieville, Iowa, to a junction with the railway of the Wabash, St. Louis and Pacific Railway Company, so that said company shall enjoy and use a continuous railway from Keokuk, Iowa, to the junction *of* above named, then from that date until the exchange above mentioned shall be made (so long as in possession under this lease) the said com-
190 pany will pay to the holder of such certificate a sum equivalent to the dividends which said company may declare upon the same amount of common stock.

It is further stipulated and mutually agreed that before entering upon the back of the above-described receipts of the Farmers' Loan and Trust Company for the said Missouri, Iowa and Nebraska bonds the guaranty aforesaid or attaching the certificate of guaranty thereto the said receipts for bonds shall first have stamped or written thereon:

"Subject to an agreement made by the within-named trustee with the Wabash, St. Louis and Pacific Railway Company for a consolidation or lease of the Missouri, Iowa and Nebraska railroad."

In witness whereof the first and second parties above named have caused their seals and signatures to be hereto affixed, by their respective presidents and secretaries, the day and year above written.

MISSOURI, IOWA AND NEBRASKA RAILROAD COMPANY,
By F. M. DRAKE, *President.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY,
By SOLON HUMPHREYS, *President.*

Said Exhibit B, above referred to, is in words and figures following, to wit:

EXHIBIT "B."

This indenture, made and entered into this first day of March, A. D. 1881, by and between the Missouri, Iowa & Nebraska Railway Company, a consolidated corporation of Missouri and
191 Iowa, party of the first part, and the Mercantile Trust Company, as trustee, of the city of New York, party of the second part, witnesseth:

Whereas the first party heretofore executed and delivered to the Farmers' Loan and Trust Company, trustee, a certain mortgage or deed of trust, bearing date the first day of June, 1870, whereby the railroad, property, and franchises of said first party were mortgaged to said The Farmers' Loan and Trust Company, trustee, to secure six thousand first-mortgage bonds of the Missouri, Iowa and Nebraska Railway Company for one thousand dollars each, falling

due on the first day of June, 1910, and payable at the office of said trustee, in the city of New York, with the half-yearly installments of interest thereon at the rate of seven per cent. per annum, three millions twenty-five thousand dollars of said bonds only having been issued; and

Whereas by an agreement, dated February 12th, 1880, between the Missouri, Iowa and Nebraska Railroad Company, of the first part, and H. C. Thacher, Henry Hill, and George Opdyke, a committee of the bondholders of said last-named company, of the second part, and the Wabash, St. Louis and Pacific Railway Company, of the third part, the Missouri, Iowa and Nebraska Railway Company did agree to effect the consolidation of its capital stock, property, and franchises with the capital stock, property, and franchises of the Wabash, St. Louis and Pacific Railway Company, if the assent of the directors and shareholders of said company thereto, as required by law, could be procured; and in the event of the inability of the said Missouri, Iowa and Nebraska Railway Company to secure the requisite assent of its directors and shareholders to such proposed consolidation, then the said Missouri, Iowa and Nebraska Railway Company did bind itself by said agreement to lease its rail-
192 road and equipment in perpetuity to said Wabash, St. Louis and Pacific Railway Company upon certain conditions in said agreement set forth; and

Whereas, in furtherance of said agreement and in pursuance of a resolution of its board of directors duly adopted and the authorization thereto of its stockholders, the Missouri, Iowa and Nebraska Railway Company did demise and lease its railroad extending from the Mississippi river at Keokuk, Iowa, through and across the States of Iowa and Missouri, to a point on the Missouri river opposite Brownsville, Nebraska, with the franchises, property, and everything appertaining thereto, unto the Wabash, St. Louis and Pacific Railway Company, by indenture of lease bearing date the third day of September, 1880, for the term of ninety-nine years upon the terms and conditions in said indenture set forth; and

Whereas in and by said agreement of February 12th, 1880, the Wabash, St. Louis and Pacific Railway Company (among other things) did promise, in the event of obtaining title as lessee to the railroad, property, and franchises aforesaid of the Missouri, Iowa and Nebraska Railway Company, to execute its mortgage bonds, to bear interest at six per centum per annum, principal and interest payable in gold or its equivalent in the city of New York, secured by first mortgage on the railroad and property of the Missouri, Iowa and Nebraska Railway Company, and issue the same to an amount not exceeding fifteen thousand dollars, par value, per mile of said railroad, the said first party having in said agreement stipulated and it being by said second and third parties understood that the length of said railroad then complete was one hundred and forty-eight and one-half miles, the trustee of said bonds to be retired being, moreover, in possession of funds to complete three additional miles of said railroad, so that the whole of said outstanding
193 bonds could be retired by new bonds issued by the said Wabash,

St. Louis and Pacific Railway Company at the rate of fifteen thousand dollars for each mile of completed railroad as aforesaid; and

Whereas since the date of the contract and agreement aforesaid it has been found on measurement that the completed road of the Missouri, Iowa and Nebraska Railway Company is but one hundred and forty-three miles and a half in length, thus necessitating the issue of bonds exceeding fifteen thousand dollars a mile, but not over sixteen thousand dollars a mile, of such completed portion; and

Whereas said bonds were by the terms of said agreement to be exchanged for bonds of the Missouri, Iowa and Nebraska Railway Company, secured as aforesaid by its mortgage of June 1st, 1870, at the rate of fifteen thousand dollars six per cent. bonds and five thousand dollars preferred stock of the Wabash, St. Louis and Pacific Railway Company for every twenty thousand dollars of said bonds of the Missouri, Iowa and Nebraska Railway Company, and the said Missouri, Iowa and Nebraska Railway Company did agree that it would cause all the holders of its then outstanding bonds, amounting to three millions and twenty-five thousand dollars, to enter into covenants for the surrender, cancellation, and exchange of the same as in said agreement provided; and

Whereas, the Wabash, St. Louis and Pacific Railway Company having, as aforesaid, obtained title by lease to the railroad, property, and franchises of the Missouri, Iowa and Nebraska Railway Company, the stockholders of the Wabash, St. Louis and Pacific Railway Company, at a meeting of said stockholders called by the board of directors of said company, held at its principal place of business, in the city of St. Louis, in the State of Missouri, on
194 the 20th day of November, 1880, full notice of the time, place, and object of said meeting having been given for more than sixty days prior to the time of said meeting in the manner required by law, by a resolution passed by the concurrent votes of the holders of more than two-thirds of all the stock of said Wabash, St. Louis and Pacific Railway Company (which resolution has been duly recorded as required by law), did authorize and direct the execution of its bonds to such amount as should be required, not exceeding two millions three hundred thousand dollars, for the purposes aforesaid, conditioned and bearing interest as aforesaid, and did authorize the same to be issued and to be exchanged on the terms aforesaid for the outstanding bonds hereinbefore mentioned of the Missouri, Iowa and Nebraska Railway Company; and

Whereas said Wabash, St. Louis and Pacific Railway Company has, in pursuance of said resolution of its stockholders and of the order of its board of directors and in furtherance of said agreement, executed its twenty-two hundred and sixty-nine bonds, each for the sum of one thousand dollars (being at the rate of fifteen thousand eight hundred and eleven dollars and eighty-four cents or thereabout per mile on one hundred and forty-three miles and a half of completed road), conditioned as aforesaid, with coupons or interest warrants attached thereto, and placed the same in the hands of the

Mercantile Trust Company, said trustees, for the purpose of exchange as aforesaid; and

Whereas said bonds are numbered from one to twenty-two hundred and sixty-nine, both inclusive, and are, together with the certificates of the trustee appearing thereon and the coupons attached thereto, substantially in the following form:

Wabash, St. Louis and Pacific Railway Company First-Mortgage Bond, Iowa Division.

Know all men by these presents, that the Wabash, St. Louis
195 and Pacific Railway Company is indebted to the Mercantile Trust Company, or bearer, in the sum of one thousand dollars in gold coin of the United States of America which said sum said company hereby promises to pay to said The Mercantile Trust Company, or the bearer hereof, on the first day of March, A. D. 1921, at the office or agency of said company in the city of New York, with interest thereon at the rate of six per centum per annum, payable semi-annually in United States gold coin in the city of New York, on the first days of March and September in each year, on the presentation and surrender of the interest coupons hereto annexed, as they severally become due. The said sums of principal and interest to be paid to the holder hereof free and clear of all taxes and assessments which the said company may by lawful authority be required to withhold from the owner hereof, the said company hereby agreeing to pay such tax in addition to said interest. This bond is one of twenty-two hundred and sixty-nine of like date, amount and conditions, all of which are executed by said railway company for the purpose of being exchanged for certain bonds issued by the Missouri, Iowa and Nebraska Railway Company, a consolidated corporation of Iowa and Missouri, and bearing date June 1st, A. D. 1870, which said bonds are secured by a first mortgage or trust deed upon the railroad property and franchises owned by said last-named company. This entire issue of bonds is secured by a mortgage or deed of trust, executed by the Missouri, Iowa and Nebraska Railway Company, the owner of said railroad, to the Mercantile Trust Company, trustee, bearing date March 1st, A. D. 1881, and covering all the railroad property and franchises owned by the Missouri, Iowa and Nebraska Railway Company extending from Keokuk, Lee county, Iowa, to Van Wert, Decatur county, Iowa, about one hundred and forty-three miles and one-half in
length. Said mortgage is a first lien upon the said
196 railroad, except that of the mortgage securing the bonds to be received in exchange as aforesaid, so that said mortgage will be a first mortgage whenever all of said bonds have been exchanged. All the bonds aforesaid of the Missouri, Iowa and Nebraska Railway Company that shall be exchanged for bonds of this issue, shall be properly stamped and retained by said trustee for the protection of the persons so exchanging, and no bonds of this issue shall be sold or disposed of by said trustee except in exchange as aforesaid, and not in excess of sixteen thousand dollars per mile of said railroad.

If default shall occur in the payment of the interest upon any bonds of this issue, and such default shall continue for six months, the principal of all of said bonds shall become due in the manner and with the effect provided in said mortgage or deed of trust. This bond is payable without relief from any extension, stay or appraisement laws now existing or that may hereafter be enacted. This bond shall not be obligatory until authenticated by the certificate of said trustee. It is, however, agreed between the said company and the holder of this bond that no liability thereon shall be enforced against any officer or stockholder of said company, or against the estate of any such officer or stockholder, by virtue of any law of any State whatever, it being agreed that such officers and stockholders do not assume any personal liability on this bond.

In testimony whereof, said Wabash, St. Louis and Pacific Railway Company has caused its corporate seal to be hereunto affixed, and these presents to be executed by its president and signed by its secretary, this first day of March, A. D. 1881.

Form of Coupon.

On the first day of ——, A. D. 18—, the Wabash, St. Louis and Pacific Railway Company will pay the bearer, at its office in
197 the city of New York, thirty dollars, being interest for six months, on bond No. —, Iowa division.

—— ——, *Secretary.*

Trustee's Certificate.

This is to certify that this bond is one of twenty-two hundred and sixty-nine bonds of one thousand dollars each, secured by and mentioned in the mortgage within referred to.

THE MERCANTILE TRUST COMPANY, *Trustee.*
By —— ——, *President.*

And whereas a meeting of the board of directors of said first party was held at the city of New York on the 24th day of May, 1881, full notice of the time, place, and object of said meeting having been given in the manner required by law, at which meeting the directors of said Missouri, Iowa and Nebraska Railway Company did, by a resolution duly passed, authorize and direct the execution of a mortgage or deed of trust by said first party, covering and embracing the railroad, property, and franchises owned by said first party, to secure said twenty-two hundred and sixty-nine bonds of the Wabash, St. Louis and Pacific Railway Company executed and issued as aforesaid pursuant to said agreement:

Now, therefore, in pursuance of the resolution aforesaid and of the order of the board of directors, and for the purpose of securing the payment of the principal and interest of said twenty-two hundred and sixty-nine bonds of the Wabash, St. Louis and Pacific Railway Company and the coupons attached thereto, and in furtherance of said agreement of the 12th day of February, 1880, and the said lease of the third day of September, 1880, and in consideration of the

premises and of the sum of one dollar in hand paid by the said The Mercantile Trust Company, trustee, the Missouri, Iowa and
198 Nebraska Railway Company, the party hereto of the first part, hath this day granted, bargained, sold, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, release, convey, and confirm, unto the said The Mercantile Trust Company, as trustee, and to its successors in said trust—

All and singular the railroad of the party of the first part extending from Keokuk, Lee county, Iowa, to the south line of said county and State; thence through the counties of Clark, Scotland, and Schuyler, in the State of Missouri, to the north line of said State; thence in the State of Iowa through the counties of Appanoose, Wayne, and Decatur to Van Wert, said railroad being in the aggregate about one hundred and forty-three and one-half miles in length, together with all and singular the road-bed, right of way, tracks, side tracks, turnouts, stations, depots and depot grounds, shops, engine-houses, coal-house, fuel-houses, and all lands, structures, and appurtenances intended for the use of the railway so described, and all embankments, fences, culverts, bridges, freight-houses, and other structures intended as aforesaid, and all locomotives, freight and passenger cars, hand cars, gravel and construction cars, all machinery, tools, implements, and materials intended for the use of said road, intending to include all interest, property, estates, rights, and franchises belonging to the Missouri, Iowa and Nebraska Railway Company, with such additions and improvements as the party of the first part and the Wabash, St. Louis and Pacific Railway Company shall add thereto and no more:

To have and to hold all and singular the premises, rights, franchises, real and personal property hereby conveyed, with the appurtenances thereunto belonging, unto the said The Mercantile Trust Company and to its successors in said trust forever; in trust, however, for the person or persons and bodies politic or cor-
199 porate who shall at any time become the purchasers or holders or owners of the said twenty-two hundred and sixty-nine bonds or any part thereof or any of the coupons attached thereto.

If the said Wabash, St. Louis and Pacific Railway Company or its successors or assigns shall well and truly pay or cause to be paid the several sums of money specified in the several bonds hereinbefore described, as well the principal as the installments of interest, according to the tenor and effect of said bonds and of each or every of them, or if said bonds and the interest payable thereon become in anywise paid or satisfied, then and in such case the estate, right, title, interest, and demand of said party of the second part, its successors in said trust and assigns, shall cease, determine, and become void; otherwise to be and remain in full force and virtue in law and for the benefit and security of the holders of said bonds and each of them.

Until default be made in payment of the principal or interest of said bonds or of some of or any of them, the said Wabash, St. Louis and Pacific Railway Company shall be permitted to possess, operate, manage, and enjoy said railroad, with its appurtenances, and to take

and use the rents, incomes, tolls, issues, and profits thereof under, by virtue of, and in accordance with the terms and conditions of said lease, in the same manner and with the same effect as if this deed had not been executed. In case default shall be made in the payment of any installment of interest accruing on said bonds or any of them, and such default shall continue for a period of six months after the maturity thereof, it shall be lawful for said party of the second part or its successors in said trust, by themselves, their agents or attorneys, to enter upon, take possession of, manage, operate, and control the railroad property hereby conveyed, owned,
200 or held by lease, contract, or otherwise, by superintendents, receivers, and managers thereof, making from time to time all needful repairs, replacements, and such alterations, additions, and improvements as may seem to be judicious and proper, and to collect and receive all rents, tolls, incomes, issues, and profits thereof, and after deducting the expenses of operating said railroad and property and leasehold interests and all costs of improvements and any taxes that may have accrued thereon, as well as just and reasonable compensation for its own services in and about the premises, to apply the money arising therefrom to the payment of interest in the order in which it becomes due and ratably to the persons entitled thereto, and when said interest so in default and any installment of interest subsequently maturing shall be paid up, then said party of the second part shall restore the possession of said railroad to the said party of the first part or to the Wabash, St. Louis and Pacific Railway Company, the lessee thereof.

If default shall occur in the payment of any installment of interest and such default continue for the space of six months after maturity and demand thereof, then, if a majority in value of the holders of said bonds then outstanding and secured by this mortgage shall determine and notify said trustee that they require that the principal of all of said bonds become at once due and payable, said bonds shall thereby become due and payable, notwithstanding any clause contained therein to the contrary; and if said principal sum shall become due and not paid according to the tenor of said bonds and upon written notice by the holders of a majority of the bonds issued and outstanding under the authority hereinbefore mentioned, the said trustee shall have the power to enter upon and take possession of said railroad, with the appurtenances, and
201 all and singular the property and franchises hereby mortgaged, and the lessees or agents of the said first party are hereby authorized and required to deliver up the same, and said trustees shall cause said mortgaged premises to be sold at public auction at the city of Keokuk, Iowa, or the city of New York, as may be directed by the holders in interest of a majority of said bonds, giving at least sixty days' notice of the time and place and terms of sale and of the specific property to be sold, publishing the same in one daily newspaper in each of said cities for sixty days prior to said sale, and to adjourn said sale from time to time, if necessary in the opinion of said trustee, and, if the same shall be adjourned, to sell without further notice of the time and place of sale,

and to execute to the purchaser or purchasers a good and sufficient deed in fee simple for the same, which shall be a bar against the party of the first part and all persons claiming by, through, or under it of all right, title, claim, or demand in and to the mortgaged premises or any part thereof, and out of the proceeds of such sale and the income that may have been received for the use, operation, and management of said road while in possession of such trustees, after deducting just allowance and expenses, as in the preceding article mentioned, to pay, first, the interest, and, second, the principal of said bonds ratably and with due regard to the successive maturity of different series of coupons, as far as said proceeds will go for that purpose, and in case any surplus should remain, to pay the same over to the party of the first part; but in case it shall not be deemed proper or expedient in all or any of the States in which the mortgaged premises are found to seize, then it shall be the duty of said trustee to proceed in any proper tribunal to foreclose said mortgage, according to the usual and established principles of law and equity; but it is expressly understood and agreed be-
202 tween the parties that in no case whatever shall the party of the first part claim any right or advantage by reason of any valuation, appraisement, stay, or extension laws that now exist or may hereafter be enacted in any of the States in which said property exists or may be found; and said first-named party hereby releases to the second party all and every such right, claim, and demand, and hereby further agrees that it will neither apply for an injunction nor any stay of proceedings to arrest or prevent such sale from being made or possession being taken, as hereinbefore provided.

It is hereby expressly declared that this instrument is made and the trust herein created upon condition that if any sale shall be made under and by virtue of this mortgage, whether by judicial decree or foreclosure or in execution of the trust so created, either by judicial decree or otherwise, the holders of a majority of the said bonds then outstanding shall have the right to have said premises and all property herein embraced purchased for the use and benefit of all the holders of said then outstanding bonds. In case such sale shall be made by any person or officers other than the trustee herein named or its successors, then the holders of the majority of said bonds outstanding shall have the right, by notice in writing, to require said trustee or its successors to make such purchase on such terms as they, in said notice, shall prescribe; and in case said sale shall be made by said trustee, then the holders of a majority of said outstanding bonds shall have the right to appoint any other person whom they may choose to make such purchase, on such terms as they may prescribe. If any person other than such trustees shall be so appointed such appointment and the terms of purchase shall be in writing, a copy of which writing shall be delivered to said trustees or their successors before such sale; and if the holders of a majority of said
203 outstanding bonds shall elect to have said purchase made as aforesaid and shall prescribe the terms on which they desire to make the same, then it shall be the duty of said trustee or its successors or such other person as may be appointed as aforesaid to

make such purchase, if the same as can be made on the terms so prescribed, and, having so purchased said premises and property, the right and title thereto shall vest in the said trustee or the person so purchasing for the use aforesaid, and no bondholder shall have any claim to the said premises or property or the proceeds thereof, except his *pro rata* share therein as represented by a new company or corporation to be formed for the use and benefit of the holders of all said bonds then outstanding; and said trustee or person making such purchase shall take such lawful measures as may be deemed for the best interests of all said bondholders to organize a new company or corporation, said company or corporation to be so organized upon such terms, conditions, and limitations and in such manner as the holders of a majority of said outstanding bonds shall in writing request or direct; and thereupon the said trustee or other person making such purchase shall convey said premises and property to the new company or corporation; and it is hereby declared that all persons who shall claim any interest, benefit, or advantage by virtue of this instrument or the trust hereby created shall take the same subject to all the terms herein contained and subject to all the rights and powers conferred by this instrument on the holders of a majority of the bonds hereby secured.

It is hereby agreed and understood that for better assurance to the party of the second part and to the holders of the bonds secured by this instrument the party of the first part agrees that it will, on demand, at any and all times hereafter make, execute, and deliver all such other and further conveyances and assurances for the
204 better assuring unto said trustee and its successors in the trust hereby created the said railroad, with its appurtenances, equipment, and property hereinbefore described or intended so to be, and all other property belonging to said party of the first part, now owned or hereafter to be acquired, as above provided and set forth, or any and all the franchises now held or hereafter to be acquired by the party of the first part, as said trustee or its successors, by their counsel, shall reasonably advise, devise, or require.

Whenever it shall happen, from changes required to be made in said railroad and appurtenances, that any parcel or property, whether real or personal, has become unnecessary or useless to the said railroad company for its business by reason of change of line or depot or other reasons, or when any of the personal property shall have become worn out or inefficient and unnecessary to the operation of said railroad, then and in such case it shall be lawful for the directors of said railway company to make sales, exchanges, or other disposition of such parcels of real or personal property as they may deem for the best interest of said railroad company, and upon the sale or exchange of such property for any other and when any other property shall be acquired in the place of such property the same shall be held subject to the lien of this mortgage as if it was the property of the said company at the date hereof, and the parcels of property so held and disposed of by said directors shall be exempt from the lien hereby created. It is further agreed that said trustee shall not be required to take any action under this deed in the

event of default until the party asking such action shall have indemnified such trustee for expenditure necessarily involved. All bonds that shall be received by said trustee in the course of said exchange shall be retained by said trustee for the protection of the persons who shall hold or own the bonds hereby secured, in
205 the event of any holder or holders of the said Missouri, Iowa and Nebraska Railway Company bonds refusing to exchange and claiming priority over those who shall make such exchange, and the bonds so received in exchange shall, for the purpose of preserving the rights and security of the holders of the bonds given in exchange for them and to prevent their use for any other purpose, be endorsed as follows:

"This bond has been deposited with the Mercantile Trust Company, trustee, under the provisions of a certain deed of trust or mortgage made by the Missouri, Iowa and Nebraska Railway Company, dated March 1st, 1881, conveying to said The Mercantile Trust Company, as trustee, the railroad of the Missouri, Iowa and Nebraska Railway Company. It is not assignable for any purpose, but is to be used only in foreclosure, if need be, in pursuance of said trust."

It is, however, expressly understood and agreed that the said trustee shall not be charged with the duty of exchanging the said bonds, but it shall be the duty of said trustee to authenticate the said bonds and deliver them over to the party of the first part for the purpose of such exchange, and the party of the first part hereby agrees to effect and carry out the exchange of bonds hereinbefore contemplated and provided for and to deliver over to the said trustee the bonds of the first party which it shall receive in exchange for the bonds of the Wabash, St. Louis and Pacific Railway Company to be delivered to it by said trustee as aforesaid.

The said trustee shall receive reasonable compensation for every act done by it as such trustee under this indenture, and the said trustee shall not be required to take any step in the execution of this trust likely to subject it to liability or expense unless the holder of the bonds secured hereby or some of them shall give sufficient security to indemnify the trustee from any such liability
206 or expense, and the said trustee shall be at liberty to appoint counsel learned in the law in all suitable cases, whose reasonable fee shall be a proper charge upon the trust estate; and it is hereby further provided that the trustee shall not be liable for any act, default, or neglect of any agent by it appointed when such agent shall have been selected with reasonable discretion and shall only be required to exercise good faith and ordinary prudence and diligence in the performance of its duties under this indenture.

In witness whereof the said Missouri, Iowa and Nebraska Railway Company, in pursuance of the resolutions aforesaid, has caused these presents to be executed and signed by its president and attested by its secretary and has caused its corporate seal to be hereto affixed the day and year aforesaid, and said The Mercantile Trust

Company has also executed the same to evidence their acceptance of the trust hereby created the day and year aforesaid.

THE MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY,

[SEAL.] By A. L. HOPKINS, *President.*

Attest: THEO. P. SHOUTS, *Secretary.*

THE MERCANTILE TRUST COMPANY, *Trustee,*

[SEAL.] By LEWIS FITZGERALD, *President.*

Attest: H. C. DEWEY, *Secretary.*

STATE OF NEW YORK, } ss:
County of New York, }

Be it remembered that on this 29th day of March, 1881, personally came before me, the undersigned, a notary public
207 within and for the county aforesaid, A. L. Hopkins, who, being by me duly sworn, did depose and say that he is the president of the Missouri, Iowa and Nebraska Railway Company, grantor in the foregoing instrument; that the name of said company is signed to said instrument by him as president of said company by virtue of the order of the board of directors; that the seal of the company attached thereto is the proper and genuine seal of said company and is affixed thereto by order of said board of directors; and the said A. L. Hopkins, as president, acknowledged the foregoing instrument to be the act and deed of the Missouri, Iowa and Nebraska Railway Company for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my notarial seal of office this 29th day of March, 1881.

WM. J. HARDING,
Notary Public.

STATE OF IOWA, } ss:
County of Appanoose, }

Be it remembered that on this 8th day of April, 1881, personally came before me, the undersigned, a notary public within and for the county aforesaid, Theo. P. Shouts, who, being by me duly sworn, did depose and say that he is the secretary of the Missouri, Iowa and Nebraska Railway Company, grantor in the foregoing instrument; that he countersigned the said instrument and affixed the seal of said company thereto by order of the board of directors thereof.

In witness whereof I have hereunto set my hand and affixed my notarial seal of office this 8th day of April, 1881.

[SEAL.] W. L. SELBY,
Notary Public.

208 EXHIBIT "C."

In the Circuit Court of the United States for the Southern District of Iowa, Eastern Division.

THE FARMERS' LOAN AND TRUST COMPANY, Complainant,
vs.
THE MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY, The Mercantile Trust Company, The Wabash, St. Louis and Pacific Railway Company, and The Humeston and Shenandoah Railroad Company, Defendants. } In Equity.

Decree.

In this cause The Mercantile Trust Company and The Humeston and Shenandoah Railroad Company, defendants, having appeared to and answered the supplemental bill of complaint of the complainant, and the cause having been set down for hearing upon the said supplemental bill and the said answers, and the said Humeston and Shenandoah Railroad Company having filed its cross-bill against the complainant The Missouri, Iowa and Nebraska Railway Company and Thomas Thacher, receiver, and the defendants to said cross-bill having demurred thereto, and the defendants The Missouri, Iowa and Nebraska Railway Company and The Wabash, St. Louis and Pacific Railway Company having each entered its appearance to the said supplemental bill, and each of them having failed to file its reply, demurrer, or answer to the said supplemental bill in the clerk's office on the rule day next succeeding that
209 of entering its appearance, and thereupon, in default thereof, the complainant having entered an order in the order book that said supplemental bill be taken *pro confesso*, and more than thirty days having elapsed from and after the entry of said order, it is now

Ordered, adjudged, and decreed that the said supplemental bill be taken as true and confessed as against the said defendants The Missouri, Iowa and Nebraska Railway Company and The Wabash, St. Louis and Pacific Railway Company and each of them.

And now, on this day, this cause came on to be heard upon the said supplemental bill and the answers thereto aforesaid and upon the said demurrer to the said cross-bill, and the same were argued by counsel, and thereupon it was ordered, adjudged, and decreed as follows, to wit:

That the said demurrer to the said cross-bill be, and the same is hereby, overruled; and it is further ordered, adjudged, and decreed that the equities are with the complainant, and that the facts and circumstances set forth in the supplemental bill of complaint herein are in substance true; that the decree of foreclosure and sale made and entered herein on the 22nd day of October, A. D. 1880, is still

in full force and is not reversed, vacated, or in any manner satisfied, cancelled, or discharged.

That on the 12th day of February, 1880, pending the foreclosure proceedings herein, the Missouri, Iowa and Nebraska Railway Company and the Wabash, St. Louis and Pacific Railway Company and the committee of the holders of the majority of the bonds of June 1st, 1870, secured by the mortgages made to the complainant, made and entered into a contract in writing, a copy of which is annexed to the supplemental bill herein.

That on the 3rd day of September, 1880, an indenture or lease was made and entered into by and between the said railway companies, copies of which are annexed to the supplemental bill
210 of complaint herein, whereby the Missouri, Iowa and Nebraska Railway Company leased its road and property to the Wabash, St. Louis and Pacific Railway Company for ninety-nine years on certain terms and conditions.

That the Wabash, St. Louis and Pacific Railway Company entered into possession of the road and property of the Missouri, Iowa and Nebraska Railway Company in pursuance of the terms and provisions of said lease.

That on March 1st, 1881, an indenture of mortgage was made between the Missouri, Iowa and Nebraska Railway Company and the defendant The Mercantile Trust Company, trustee, a copy of which is annexed to the supplemental bill of complaint herein, by which the Missouri, Iowa and Nebraska Railway Company mortgaged its road and property to the Mercantile Trust Company to secure the payment of a series of bonds of the Wabash, St. Louis and Pacific Railway Company made under the contract of February 12th, 1880, and the lease of September 3rd, 1880, which bonds were made for the purpose of being exchanged for the existing bonds of the Missouri, Iowa and Nebraska Railway Company secured by the mortgages to the complain-t herein, and which mortgage to the Mercantile Trust Company provided in substance that all the bonds received by the Mercantile Trust Company as trustee thereunder in the course of such exchange should be retained by such trustee for the protection of the persons who should hold or own the bonds thereby secured in the event of any holder or holders of the Missouri, Iowa and Nebraska Railway Company bonds refusing to exchange or claiming priority over those who should make such exchange, and that the bonds so received in exchange should, for the purpose of preserving the rights and security of the holders of the bonds in exchange for them, be endorsed to the effect that they were deposited with the Mercantile Trust Company, trustee,
211 under the provisions of said mortgage deed and were not assignable for any purpose, but were to be used only in foreclosure, if need be, in pursuance of the trust.

That on the 28th day of March, 1882, an indenture was made between the Missouri, Iowa and Nebraska Railway Company, the Wabash, St. Louis and Pacific Railway Company, and the Humeston and Shenandoah Railroad Company, a copy of which is annexed to the supplemental bill of complaint herein, whereby the Missouri

Iowa and Nebraska Railway Company, for certain considerations therein stated, conveyed to the Humeston and Shenandoah Railroad Company that portion of the railroad of the Missouri, Iowa and Nebraska Railway Company extending from Humeston, in the county of Wayne, in the State of Iowa, to Van Wert, sometimes called Prairieville, in the county of Decatur, in the State of Iowa, being in aggregate about 17.08 miles in length, with the appurtenances thereof, which property so conveyed was a part of the road and property of the Missouri, Iowa and Nebraska Railway Company included and conveyed by the mortgagees to the complainant herein.

That the Humeston and Shenandoah Railroad Company thereupon, in pursuance of said indenture, entered into possession of the said property so conveyed to it as aforesaid, but that it had actual knowledge at the time of the existence of the mortgages made to the complainant herein, to foreclose which the original bill herein was filed, and of the existence of the decree of foreclosure and sale entered herein October 22nd, 1880.

That the holders and owners of three thousand and eight (3,008) bonds of the three thousand and twenty-five (3,025) bonds outstanding and existing under the mortgages of June 1st, 1870, made to the complainant herein and mentioned in the decree of October 22nd, 1880, exchanged the same, under and in pursuance
212 of the provisions of the agreement above stated, for two thousand two hundred and fifty-six (2,256) bonds of the Wabash, St. Louis and Pacific Railway Company of one thousand dollars ($1,000) each, secured by the mortgage so made to the Mercantile Trust Company as aforesaid, and for seven hundred and fifty-two thousand dollars ($752,000.00) of the preferred stock of the Wabash, St. Louis and Pacific Railway Company, but that the holders of seventeen (17) of said bonds of June 1st, 1870, did not exchange them for such bonds of the Wabash, St. Louis and Pacific Railway Company, but still hold and own the same; that the said three thousand and eight (3,008) bonds of June 1st, 1870, were after such exchange held by the Mercantile Trust Company as trustee for the holders of the two thousand two hundred and fifty-six (2,256) bonds of the Wabash, St. Louis and Pacific Railway Company and as collateral security for said two thousand two hundred and fifty-six (2,256) bonds; that the holders and owners of seventeen (17) of the bonds of the Missouri, Iowa and Nebraska Railway Company of June 1st, 1870, secured by the mortgages to the complainant herein, did not exchange their said bonds for bonds of the Wabash, St. Louis and Pacific Railway Company, but, on the contrary, refused and still continue to refuse to exchange the same, and have claimed and still continue to claim priority over the holders of said bonds who have made such exchange.

That there is now due and unpaid upon each of the said Wabash, St. Louis and Pacific Railway Company's bonds the sum of one thousand one hundred and forty-nine dollars and ten cents ($1,149.10), and upon all of the said two thousand two hundred and fifty-six (2,256) Wabash, St. Louis and Pacific Railway Company's

bonds in the aggregate the sum of two million five hundred and ninety-two thousand three hundred and sixty-nine dollars and sixty cents ($2,592,369.60), with interest thereon (at the rate
213 of six per centum (6 per cent.) per annum from the date of this decree), payable semi-annually.

That there is now due and unpaid upon each of the said three thousand and twenty-five (3,025) Missouri, Iowa and Nebraska Railway Company's bonds of June 1st, 1870, the sum of two thousand two hundred and sixty-six dollars and seventeen cents ($2,266.17), with interest from the date of this decree on the principal sum at the rate of seven per cent. per annum, payable semi-annually, and on the interest at the rate of six per centum per annum, and upon the said seventeen (17) Missouri, Iowa and Nebraska Railway Company's bonds in the aggregate the sum of thirty-eight thousand five hundred and twenty-four dollars and ninety cents ($38,524.90), with interest as aforesaid.

That all the costs and expenses of this suit, the allowances for compensation, disbursements, and expenses of the complainant, and the allowances to counsel, so far as the same were ordered to be paid in the former decree herein of October 22nd, 1880, have been paid.

That the defendant The Missouri, Iowa and Nebraska Railway Company has wholly failed and neglected to pay the amount due upon the bonds and mortgages mentioned in the said decree as required therein, and still continues to so neglect and refuse, and has made default therein.

That the holders of the said seventeen (17) bonds and coupons thereto annexed are entitled to have the said decree of October 22nd, 1880, enforced for their benefit as to the amount due on their bonds to the same extent that the holders of the other three thousand and eight (3,008) bonds, but that the decree must be executed for the benefit of all parties interested in the said three thousand and twenty-five (3,025) bonds equally and *pro rata* as against each other.

214 Wherefore the court doth further order, adjudge, and decree that the said defendant, The Missouri, Iowa and Nebraska Railway Company, do, within five (5) days from and after the date of this decree, pay the amounts due on the bonds and coupons aforesaid, together with the costs and expenses of this suit to be taxed; that in default thereof the mortgaged premises described in the said decree of October 22nd, 1880, be sold at public auction, at the front door of the building in which the United States courts are held, in the city of Keokuk, in the State of Iowa, by P. T. Lomax, Esq., a master of this court, and that the compensation of such master shall hereafter be fixed by the court. The said master is hereby directed to give notice of the time and place of such sale by advertising the same in the Daily Gate City, a newspaper published at Keokuk, in the State of Iowa, and in the Commercial and Financial Chronicle, a newspaper published in the city of New York, once a week for four (4) successive weeks—the last one of such insertions shall be at least ten (10) and not more than — (20) days

before such day of sale—which notice shall contain a brief description of the property to be sold; that the mortgaged property be sold absolutely and not subject to statutory redemption, but the same shall be sold in two parcels, the first of said parcels which shall be so sold to include all of the mortgaged property except the seventeen and eight one-hundredths ($17\frac{8}{100}$) miles of said railway extending from Humeston, in the State of Iowa, to Van Wert, in the State of Iowa, and the second of said parcels to include said seventeen and eight one-hundredths ($17\frac{8}{100}$) miles of said railway, which said second parcel shall be sold in case there be not realized from the sale of the first parcel enough to pay all the moneys found due as above stated, and that any party to this suit or any of the bond-
holders whom such party may represent may bid for and
215 purchase the said property or either parcel thereof; that the said master shall adjourn and postpone the said sale from time to time without further advertisement, if so requested by the complainant or its solicitor or counsel; that the said master shall require the purchaser to pay in cash or receiver's certificates authorized to be issued by order of this court in this cause by Thomas Thacher, receiver, on the day of sale, the sum of three hundred and twenty-five thousand dollars ($325,000.00), and the balance of the said purchase-money may at the time of the delivery of the master's deed be paid in cash or in the receiver's certificates aforesaid or in the bonds and coupons of June 1st, 1870, secured by the mortgages above mentioned, which bonds and coupons shall be received and accepted in payment of said balance to the extent and for the amount which the holders thereof would be entitled to receive in the distribution of the proceeds of said sale as hereinafter provided; that at and upon the making of said sale the said master shall make and execute a proper and suitable deed or deeds or instruments of conveyance of the said mortgaged premises and property to the purchaser or purchasers at the said sale, and that he also forthwith report to this court, if in session, and if not in session then to the next term thereof, the said sale for approval and confirmation, and upon the approval and confirmation of the said sale the said deed or deeds shall be delivered to the said purchaser or purchasers, and upon his or their payment — the amount of the purchase price thereof he or they shall be put into possession of the mortgaged premises and property; that out of the cash payment to be made by the purchaser or purchasers as herein ordered there shall be paid by the said master the following sums:

First. The fees of the master for his services in executing
216 this decree and his necessary and reasonable expenses and disbursements.

Second. The other proper costs of this suit to which the complainants are entitled, to be taxed by the clerk of this court.

Third. All certificates heretofore issued by Thomas Thacher, the receiver heretofore appointed herein under the order of this court, which have not been received by the said master in payment of purchase-money as hereinabove provided.

The balance of the proceeds of sale up to the full amounts herein

and hereby found due on the seventeen (17) bonds aforesaid of June 1st, 1870, and on the two thousand two hundred and fifty-six (2,256) bonds of the Wabash, St. Louis and Pacific Railway Company aforesaid shall be paid over by the master to the complainants herein as trustee, in order that the complainant in the execution of its trust may distribute the same, which it shall do as follows: Seventeen three thousand and twenty-fifth ($\frac{17}{3025}$) portion- thereof to the holders of the said seventeen (17) bonds and coupons as aforesaid *pro rata* among the several holders thereof, and three thousand and eighty three thousand and twenty-fifth portions ($\frac{3008}{3025}$) to the holders of the two thousand two hundred and fifty-six (2,256) bonds made by the Wabash, St. Louis and Pacific Railway Company March 1st, 1881, to be distributed *pro rata* among the several holders of the said two thousand two hundred and fifty-six (2,256) bonds until the said two thousand two hundred and fifty-six (2,256) bonds are paid in full, after which the entire residue, if any, shall be paid to the holders of the said seventeen (17) bonds until they are paid in full.

If such balance of the proceeds of sale, however, shall be more than sufficient to pay the amounts found due or to become due herein upon the said seventeen (17) bonds of the Mis-
217 souri, Iowa and Nebraska Railway Company of June 1st, 1870, and the said two thousand two hundred and fifty-six (2,256) bonds of the Wabash, St. Louis and Pacific Railway Company of March 1st, 1881, as aforesaid, then the balance, after the payments aforesaid, shall be paid into court to await the further order of this court for the disposition thereof; that upon the confirmation of the said sale the Missouri, Iowa and Nebraska Railway Company and the other defendants and all or any person or persons, party or parties, claiming by or under them or either or any of them shall be absolutely barred, foreclosed, and precluded from all right, title, interest, claim of redemption in or to the whole or any part of the above-described premises or property.

And it is further ordered, adjudged, and decreed that the defendants The Missouri, Iowa and Nebraska Railway Company, The Humeston and Shenandoah Railroad Company, and The Mercantile Trust Company shall each make, execute, and deliver to the purchaser or purchasers at the said sale, when the said sale shall have been approved and confirmed by the court, proper and suitable deeds or instruments of conveyance of the said mortgaged premises and property, conveying to the said purchaser or purchasers all the right, title, and interest of the said defendants of, in, and to the mortgaged premises and every part and parcel thereof.

O. C. Dusonchet, claiming to be the holder of fourteen (14) of the seventeen (17) bonds aforesaid, having applied herein for leave to be made a party defendant hereto, the court denies such application, but this decree is made and entered and the denial of such application is made without prejudice to any of the claims of the holder of any of said fourteen (14) bonds.

Any and all questions on behalf of the holders of said fourteen (14) bonds that may exist of any kind as to the payment of

said bonds, coupons, and interest, and including any ques-
218 tion as to the right of the holder of said bonds to priority of payment or amount thereof or proportion of proceeds of sale, are expressly reserved for future consideration, and any holder of any of such bonds is given until the decree of confirmation to file his petition of intervention; and if any holder thereof shall fail to intervene by such time, then distribution shall be made as hereinbefore indicated; but if such petition be filed by such time, then no distribution shall be made by the trustee until the further order of this court, and the court retains jurisdiction therefor.

And it is further ordered, adjudged, and decreed by the court that nothing herein contained shall be taken or construed to prejudice that part of the cross-bill of the Humeston and Shenandoah Railroad Company making a claim for improvements, and the same shall be heard and determined upon issues joined, precisely as if this decree had not been rendered prior to the disposition of that part of the said cross-bill, and the said defendants in said cross-bill are now and hereby assigned to answer that part of the said cross-bill on or before the August rule day, but this clause shall not affect the foreclosure of the mortgage or the sale of the property as hereinbefore decreed.

And it is further ordered, adjudged, and decreed that this cause, as to all the matters now in controversy or hereafter coming in controversy between the plaintiff and any and all the intervening claimants, including those who may intervene in the future, on claims now or hereafter in existence, is continued until the further order of the court, and such rights and claims and matters in controversy are in nowise affected or determined by this decree, but this clause shall not affect the foreclosure of the mortgage or the sale of the property as hereinbefore decreed.

219 And afterwards, to wit, on the twenty-first day of June, A. D. 1890, there was filed in said cause the joint answer of Scotland County *et al.* to the amended bill of revivor in words and figures following, to wit:

(*Joint Answer of Scotland County et al. to the Amended Bill of Revivor.*)

In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, May Term, 1890.

CHARLES A. SECOR *et al.*, Plaintiff-,
vs.
JAMES K. SINGLETON *et al.*, Defendant-. } 1505.

In the matter of the application of the Keokuk & Western Railroad Company for revivor of decree.

To the judges of the circuit court of the United States for the eastern division of the eastern district of Missouri:

The joint and several answer of Scotland County, Scotland County Court, Robert M. Thomson, Oraton A. Barnes, and James M. Clark, county justices, and Benjamin F. Bourn, collector of revenues of said county, respondents.

These respondents, now and at all times hereafter reserving all manner of benefit and advantage to themselves of exceptions to the many errors and insufficiencies in the amended bill of revivor contained, and answering thereto fully, or so much or such parts thereof as these defendants are advised is material for them to answer unto, they answer and say:

220 1st. They admit that Charles A. Secor and his co-complainants, as citizens and residents of the State of Illinois and as stockholders of the Missouri, Iowa & Nebraska Railway Company, brought an action, as named and described in complainants' amended bill, in this court at the time named against the said counties, the justices of the county courts of same, and against their corporation, the said Missouri, Iowa & Nebraska Railway Company, all of whom as defendants were citizens and residents of the State of Missouri, and that the said action was brought to enforce an alleged right which should have been asserted by the said corporation, but the bill failed to allege the facts required of bills so constituted by rule ninety-four of equity practice for courts of the United States, and this court, therefore, being without original jurisdiction herein, should dismiss this cause and proceed no further.

2nd. They further say that the supreme court of Missouri, in a cause entitled The State of Missouri at the relation and to the use of William H. Wine, collector of the revenues for Scotland county, Missouri, against The Keokuk & Western Railroad Company (complainants herein), in an action brought to enforce the lien of the said State of Missouri for taxes assessed and levied against the Missouri, Iowa & Nebraska Railway Company for the year 1886, after the rendition of final decree herein and before the said purchase by the said Keokuk & Western Railroad Company, ordered, adjudged, and decreed that the said Keokuk & Western Railroad Company were and are liable to pay such taxes so assessed

and levied, and declared that the said Missouri, Iowa & Nebraska Railway Company was a new corporation organized under the statutes of Missouri enacted subsequent to the adoption of the constitution of 1865 and had no exemption nor right to ex-
221 emption of its property from taxation, and that the statutes of the State of Missouri commanded and required of the original defendants herein and now requires of these defendants to levy and collect taxes and to collect taxes and enforce the lien of the State for taxes assessed and levied against the said Missouri, Iowa & Nebraska Railway Company from and of the Keokuk & Western Company, the record of which cause these defendants will produce when and where this honorable court shall order.

3rd. That on the 13th day of February, 1888, this complainant, The Keokuk & Western Railroad Company, brought an action in the northern division of this judicial district, entitled The Keokuk & Western Railroad Company against The County Court of Scotland County and others, being the same defendants herein, the object of which was to enjoin these defendants from collecting taxes from the Keokuk & Western Company, which, the bill alleged, had been assessed in 1883, 1884, 1885, 1886, & 1887, while owned and possessed by the said Missouri, Iowa and Nebraska Railway Company, and therein the said Keokuk & Western Company alleged that the decree in this cause was an adjudication in favor of said Keokuk & Western, and on the hearing of said cause this honorable court, sitting in the northern division of this district, on the 28th day of January, 1890, last past, after carefully considering all the questions presented, and which are identically the same as the questions herein involved, decided that the Missouri, Iowa and Nebraska Railway Company was not exempt from taxation, and that the Keokuk and Western Railway Company was not entitled to an injunction; that the decree in this cause does not constitute a rule of property and is not an estoppel on these defendants to deny the exemption claimed for the Missouri, Iowa & Nebraska
222 Railway Company, the record of which cause these defendants will produce when and where this honorable court shall direct.

That there is therefore a full, complete, and adequate decision rendered between the parties to this action as now constituted on the subject-matter herein involved in favor of these defendants and against complaint in revivor herein, and that therefore there is a former adjudication between these parties, which complaint ought not again to be heard to litigate, but which should be considered final and forever at rest.

4th. These defendants further say that there is pending a suit in the United States circuit court for the eastern division of the southern district of Iowa for taxes of 1885, one in the Supreme Court of the United States for taxes of 1886, one in the circuit court of Scotland county, Missouri, for taxes of 1887, and two suits in the United States circuit court for the northern division of this judicial district for all taxes levied from 1872 to 1882, both inclusive, except such portion of the taxes of 1872 which have heretofore been in suit, and

that the above suits include all and every of the taxes levied by the State of Missouri or the county of Scotland against the Missouri, Iowa & Nebraska Railway Company on the property of that road located in Scotland county, Missouri; that each and every of said suits is brought by the State of Missouri at the relation and to the use of the collector of the revenues within and for Scotland county, Missouri, and against the Keokuk & Western Railroad Company; that they were all filed in courts of competent jurisdiction before the said Keokuk & Western Company filed its first bill of revivor herein or made application to this court to revive the decree; that the said suits directly involve the question of the liability of the Keokuk & Western Railroad Company to pay taxes assessed
223 and levied against the Missouri, Iowa & Nebraska Railway Company during the time of ownership and possession of the last-named company, and are brought for the purpose of enforcing the lien of the State of Missouri for such taxes on the said railroad property. Wherefore these defendants say that there are other actions pending in other courts of competent jurisdiction to determine exactly the same questions between the same parties to this action, and that therefore complainant ought not to be heard in this cause, but should be required to interpose its defences to those actions, as it has thereby a full and complete opportunity to make every defense that could be decreed herein.

5. These defendants say that the Missouri, Iowa & Nebraska Railway Company, on or about the 1st day of June, 1870, executed and delivered to the Farmers' Loan and Trust Company, a corporation of the State of New York, as trustee, for the holders of three thousand and twenty-five first-mortgage bonds of the Missouri, Iowa & Nebraska Railway Company, a mortgage on the entire road and property of said railroad company to secure the payment of the interest and principal of said bonds, and that because of failure to keep the interest paid the said trustee obtained in the circuit court of the United States for the southern district of Iowa a decree on a bill of complaint foreclosing said mortgage, the said bill being filed December 30th, 1879, and said decree being rendered October 22d, 1880, and the property was ordered sold, the record of which mortgage and decree these defendants hold themselves ready to produce in evidence when and where this honorable court shall require & file herewith as exhibits in this cause, "G." These defendants knew at the time of the rendition of the Secor decree of said mortgage, but they are informed and believe that the original defend-
224 ants herein, except the Missouri, Iowa & Nebraska Railway Company, did not know of the pendency of said cause for foreclosure of said mortgage, nor of the decree therein, and had no means of knowing the same.

They further aver that on the 12th day of February, 1880, pending the said foreclosure proceedings, and, as these defendants are informed and believe, without the knowledge or consent of said trustee and without the knowledge of the original defendants herein, except the said Missouri, Iowa and Nebraska Railway Company, and without having any means of knowing the same, the said Mis-

souri, Iowa & Nebraska Railway Company, the Wabash, St. Louis & Pacific Railway Company, a corporation of Ohio, Indiana, Illinois, and Missouri, and a committee of the holders of the majority of the bonds issued under the said mortgage of June 1st, 1870, made and entered into a contract in writing, whereby, among other things, it was agreed that the said Missouri, Iowa & Nebraska Railway Company should lease its road and other property to the said Wabash, St. Louis & Pacific Railway Company, and the said Missouri, Iowa & Nebraska Railway Company, as a primary and essential condition of the said contract, would cause all the bondholders holding bonds issued under and secured by the said mortgage of June 1st, 1870, to surrender their bonds and take in exchange therefor new bonds to be made by the said Wabash, St. Louis & Pacific Railway Company and to be secured by a new mortgage to be made by the said Missouri, Iowa & Nebraska Railway Company upon its railway and other property, and that, in the event of any holders of bonds under the said mortgage of June 1st, 1870, refusing to sanction said agreement, rendering a foreclosure necessary, the bondholders' committee of the said majority would bid at the foreclosure sale, all of which will more fully and at large appear by reference to a copy of said contract, hereto attached, marked Exhibit "A," and made a part hereof, as fully as if copied at large herein. The said Missouri, Iowa & Nebraska Railway Company never did cause all the holders of its bonds issued under and secured by the mortgage or deed of trust made by it to the Farmers' Loan & Trust Company on June 1st, 1870, as aforesaid, to agree to surrender their bonds and to take in exchange therefor bonds to be made by the Wabash, St. Louis & Pacific Railway Company, as aforesaid, nor did it ever cause all the holders of its said bonds actually to surrender the same and take in exchange therefor bonds to be made by the Wabash, St. Louis & Pacific Railway Company, as aforesaid, and its said agreement so to do was broken and never fulfilled by it.

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And thereafter, to wit, on the 3d day of September, A. D. 1880, a certain indenture of lease, a copy of which is hereto annexed, marked Exhibit "B," to which reference is hereby made as a part of this answer, was made and entered into by and between the said Missouri, Iowa & Nebraska Railway Company and the said Wabash, St. Louis and Pacific Railway Company, whereby, among other things, in pursuance of the said contract of the 12th day of February, 1880, the said Missouri, Iowa & Nebraska Railway Company leased its road and said property to the said Wabash, St. Louis and Pacific Railway Company for the term of ninety-nine years, renewable forever, for a rental of thirty (30) per cent. of the gross earnings of said road and property, to be applied and paid by said lessee, first, to the payment of all lawful taxes and assesments levied on said property; second, to the payment of the interest on the mortgage bonds of the said lessor under its said mortgage, dated June 1st, 1870, and the supplementary indenture of March 1st, 1876; and, third, to the said lessor, on the first days of April and October in each year, the residue of said thirty (30) per cent. accruing from the earnings of the said property.

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And thereupon the said Wabash, St. Louis & Pacific Railway Company entered into possession of the road and property of the said Missouri, Iowa & Nebraska Railway Company in pursuance of the terms and provisions of the said lease and remained in the possession thereof, under and by virtue of the said lease, until the dates hereinafter stated.

And afterwards, to wit, on the 1st day of March, 1881, a certain indenture was made and entered into by and between the said Missouri, Iowa & Nebraska Railway Company and the Mercantile Trust Company, as trustee, a corporation created, organized, and existing under the laws of the State of New York, a copy of which is hereto annexed, marked Exhibit "C," and to which reference is hereby prayed as a part of this answer, whereby, in pursuance of the said contract of the 12th day of February, 1880, and of the lease of the 3d day of September, 1880, the said Missouri, Iowa & Nebraska Railway Company mortgaged its road and property aforesaid to the said Mercantile Trust Company, trustee, to secure the payment of two thousand two hundred and sixty-nine (2,269) bonds of one thousand ($1,000) dollars each, made by the said Wabash, St. Louis & Pacific Railway Company under and in pursuance of the said contract of the 12th day of February, 1880, and of the lease of September 3d, 1880, with interest thereon at the rate of six (6) per cent. per annum, payable semi-annually on the first days of March and September in each year, which said bonds were made for the purpose of being exchanged for the former bonds made by the said Missouri, Iowa & Nebraska Railway Company and secured by the said mortgage of June 1st, 1870; and in the said indenture of mortgage it was
227 provided as follows, to wit: "All bonds that shall be received by said trustee in the course of said exchange shall be retained by said trustee for the protection of the persons who shall hold or own the bonds hereby secured. In the event of any holder or holders of the said Missouri, Iowa & Nebraska Railway Company bonds refusing to exchange or claiming priority over those who shall make such exchange, and the bonds so received in exchange shall, for the purpose of preserving the rights and security of the holders of the bonds given in exchange for them and to prevent their use for any other purpose, be endorsed as follows: 'This bond has been deposited with the Mercantile Trust Company, trustee, under the provisions of a certain deed of trust or mortgage made by the Missouri, Iowa & Nebraska Railway Company, dated March 1st, 1881, conveying to the Merchantile Trust Company as trustee the railroad of the Missouri, Iowa & Nebraska Railway Company. It is not assignable for any purpose, but is *is* to be used only in foreclosure, if need be, in pursuance of said trust.'"

That afterward, in the latter part of 1885 or the beginning of 1886, the Wabash, St. Louis & Pacific Company having become insolvent and being placed in the hands of receivers Tutt & Humphrey by this honorable court, the said Farmers' Loan and Trust Company undertook to enforce the decree of foreclosure rendered October 22nd, 1880, and to do so, on account of the subsequent and current happenings hereinbefore detailed, at the suggestion of the court filed

a supplemental bill detailing the new and additional circumstances, making the Mercantile Trust Company and the said Wabash, St. Louis and Pacific Railroad Company defendants, together with other persons, and detailing the failure of the lessee company to pay the rental provided for in the said lease, the taxes and the interest on the mortgage bonds of the said Missouri, Iowa & Nebraska Railway Company, under its deed of trust or mortgage aforesaid of June 1st, 1870, and supplementary indenture of March 1st, 1875, and in the payment of the 30 per cent. gross earnings, and reciting further that Tutt & Humphrey, as such receivers, being unable out of the property under their control to pay the same, were required, by order of this honorable court, to abandon the rights of the Wabash, St. Louis & Pacific Railway Company under the said lease of September 3d, 1880, and turn the property over to Thomas Thatcher, receiver, appointed in their stead for this particular property, a copy of which supplemental bill is herewith filed as Exhibit "D."

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The Farmers' Loan and Trust Company in said supplemental bill prayed the enforcement of the decree of October 22nd, 1880, and sale of the property thereunder, which was ordered and decreed by the court in all things as prayed, a certified copy being herewith filed as Exhibit "E;" and said sale took place at the time stated in complainant's amended bill of revivor. Wherefore these defendants say that the title to said property now owned and held by complainant is under and by virtue of mortgage of June 1st, 1870, as foreclosed Oct. 22, 1880, and sold July 8, 1886, and that therefore the Farmers' Loan and Trust Company, trustee, not having been made a party, nor the holders of the said bonds secured by said mortgage last named not having been made parties to this action, that the said Keokuk & Western Railroad Company does not stand in such privity to the parties to this cause as to invoke its aid or to be made parties to this suit.

That said decree in foreclosure was rendered over 18 months before the decree in this Secor case, whereby the Missouri, Iowa & Nebraska Railway Company was divested of all its right and title in and to said railroad property, and that a copy is herewith filed as Exhibit "F;" that by appointment of Fitsheury as receiver, and by agreement in perpetuity and lease to the said Wabash, St. Louis and Pacific Railway Company, and the turning of said property over to said last-named company, and by the appointment of Tutt & Humphrey receivers, and afterward of Thomas Thatcher, and still later on the supplemental bill and proceedings thereunder, resulting finally in the sale under the original decree of foreclosure, these defendants affirm that the possession as well as the title to the said property passed absolutely and forever out of the hands of the said Missouri, Iowa & Nebraska Railway Company more than eighteen months prior to the rendition of decree herein, and that when this decree was rendered the said Missouri, Iowa & Nebraska Railway Company neither had the title nor possession of said property, and the parties who had title and possession were not parties to this cause, nor were they claiming under a

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title made by the said Missouri, Iowa & Nebraska Railway Company *pendente lite*, nor subsequent to the rendition of decree herein. These defendants further affirm that the contract made with the said Wabash Company was practically rescinded by the decree in the said supplemental proceedings, validity being given to it only so far as to protect the rights of all whose interests would be jeopardized by an absolute re-cission and who had dealt with the parties in good faith.

On May 28th, 1884, the said Wabash, St. Louis and Pacific Railway Company, being hopelessly insolvent, filed in this honorable court its bill in equity against the Central Trust Company, the said Farmers' Loan and Trust Company, the said Missouri, Iowa and Nebraska Railway Company, the said Merchantile Trust Company, and a large number of other defendants, alleging its insolvent condition and praying for the appointment of a receiver to take
230 charge of, operate, and care for its various lines of railroad, including said line so possessed under said contracts made with the said Missouri, Iowa and Nebraska Railway Company, and thereupon, jurisdiction over all said defendants being acquired, such proceedings were had in said cause that afterwards, to wit, on May 28th, 1884, Solon Humphreys and Thomas E. Tutt were duly appointed as such receivers, who thereupon went into possession of said Missouri, Iowa and Nebraska railroad and so continued of the possession thereof, using and operating same, until the same was turned over to Thomas Thacher, special receiver of said railroad, afterwards and on the 9th day of June, 1885, appointed by this court in said cause. Duly had in said cause, upon the petition of the Farmers' Loan and Trust Company, setting up all the foregoing facts ordered, adjudged, and decreed, among others, as follows, namely: "It is further ordered, adjudged, and decreed that the prayer of the petitioner herein be granted, in this, to wit, that the petitioner have leave to enforce the decree of the United States circuit court for the district of Iowa made on or about the 22nd day of October, 1880, in the suit therein pending, in which The Farmers' Loan and Trust Company was complainant and The Missouri, Iowa and Nebraska Railway Company was defendant, and to execute the said decree and sell the property and premises therein referred to under and in pursuance of the provisions thereof; provided, however, that no part of the premises affected by said decree be sold until after the first day of June in the year 1886;" and therein this court further ordered, adjudged, and decreed as follows, to wit: "It is further ordered, adjudged, and decreed that the said Farmers' Loan and Trust Company, or the several owners or holders of the bonds secured by the mortgage of said Missouri, Iowa and Nebraska Railway Company to said Farmers' Loan and
231 Trust Company of New York, before any sale of said property under said decree of October 22nd, 1880, shall, unless the Wabash, St. Louis and Pacific Railway Company shall otherwise agree and this court shall otherwise direct, cause all the bonds of said Wabash, St. Louis and Pacific Company issued and dated on or about the first day of March, 1881, and secured by a certain

mortgage or deed of trust executed by the said Missouri, Iowa and Nebraska Railway Company on or about the date last aforesaid to the Merchantile Trust Company of New York, to be brought into this court for cancellation or for surrender to the said Wabash, St. Louis and Pacific Railway Company or to the receivers thereof; and this order shall be without prejudice to the right of the Merchantile Trust Company of New York, as trustee in the mortgage executed by the Missouri, Iowa and Nebraska Railway Company, to wit, on or about the 1st day of March, 1881, to secure the aforesaid bonds of the Wabash, St. Louis and Pacific Railway Company."

That no portion or scintilla of the title acquired by the Keokuk & Western Railroad Company was acquired through or by the contract of February 12, 1880, the lease of September 3, 1880, nor the mortgage of March 1st, 1881, but all such title was acquired by and through the foreclosure of the said mortgage of June 1st, 1870, and sale thereunder in August and December, 1886.

That the whole of the contract, lease, and mortgage of 1880 and 1881 was an abortive attempt to provide against the foreclosure and sale under the said mortgage of June 1st, 1870, and, having failed, the whole of said proceedings were practically rescinded by order of the United States circuit court for the eastern division of the southern district of Iowa by a decree rendered in the said supplemental proceedings on the 8 day of July, 1886, a copy of which decree is herewith annexed, marked Exhibit "E," to which defend-
232 ants pray to refer as a part of this answer as fully as if set out herein.

These defendants further state that the State board of railroad assessments and equalization, as constituted by law, regularly in each year from 1872 to 1882, both inclusive, and from 1885 to 1887, both inclusive, assessed the said railroad property, all of such assessments being in the name of the Missouri, Iowa & Nebraska Railway Company except that for 1887, and for that year the assessment was against this complainant, The Keokuk & Western Railroad Company; that the State auditor annually reported to the county court of Scotland county, as by law required, such annual assessments, and also the annual levy of State taxes made each year, and charged the collector of the revenues of said county therewith; that the county court of said county annually levied taxes upon such assessed value at the same rate, and no other, as all other property was taxed in said county, and duly made record of their proceedings therein; all which reports and which records these defendants will produce when and where this honorable court shall direct; that by the laws of Missouri such taxes so assessed and levied are prior liens upon the said railroad property, taking priority over the said mortgage of 1870 and the several contracts, &c., of 1880 & 1881, and such lien is in favor of the State; that by statute of Missouri the collector of the revenue is required to bring suit in the name of the State, and the prosecuting attorney of the county is required to be the attorney in said cause; that the form of action is prescribed by the statute so that the duties upon said officers are enjoined by law.

That the taxes aforesaid were entered of record in due form of law, and constituted notice to all the world of the lien of the
233 State upon such property, and that therefore the Keokuk & Western Railroad Company in purchasing said property purchased the same with due notice of such taxes and the lien thereof in favor of the State and against such property.

These defendants therefore say that the State of Missouri is the real party in interest in this cause, and that these defendants are only defending as agents of the State and have no personal interest in the result of this suit, and that this court is without jurisdiction in the cause.

That the amount of taxes involved on such property located in Scotland county, Missouri, exceeds eighty thousand dollars, which complainant by this action seeks to enjoin.

These defendants further allege that of all the suits now pending against complain-t for taxes levied on property within Scotland county, Missouri, all are pending in United States courts except for taxes of 1887, and such 1887 taxes were levied against the Keokuk & Western in person after said purchase and not against the said Missouri, Iowa & Nebraska Railway Company, while for all other prior years the levies were against the last-named company.

They further say that the said supplemental decree as well as the original decree of foreclosure were based on the said mortgage of June 1st, 1870, and that the payments ordered to be made in both of said decrees were founded upon the 3,025 bonds issued under the said mortgage, and that no notice was taken by said decree of the said mortgage of 1881, and that no priority was given to any of the 1870 bonds, whether exchanged for the Wabash bonds or not, but were all treated as if no Wabash bonds had been issued; that therefore the amended bill does not in anywise show a state of
234 facts whereby a title was acquired by complainant except through the said mortgage of 1870, as was shown by the original bill of revivor herein.

Defendants therefore say that complainant by its amended bill of revivor has not shown any right or reason to this court why the said decree should be revived in the name and interest of the said Keokuk & Western Railroad Company, and they therefore say that, having answered fully in all matters herein they are required to answer, they pray the court to dismiss the bill herein filed; that they go hence without day and recover of and from complainant their costs in this behalf most wrongfully laid out and expended, and that they have judgment for their damages and attorney's fees, and for all proper and general relief.

JOHN C. MOORE,
Solicitor for the Defendants Named in This Answer, Rob't M. Thomson, O. A. Barnes, James M. Clark, Ben. F. Bourn.

STATE OF MISSOURI, } *ss:*
County of Scotland, }

Robert M. Thomson, Oraton A. Barnes, James M. Clark, and Benjamin F. Bourn, being duly sworn, depose and say that they are

respondents in the foregoing answer to the amended bill of revivor of complainant herein; that they have read the same and know the contents thereof; that the said answer is true of their own knowledge except as to those matters which are therein stated to be on their information and belief, and as to those matters they believe them to be true.

ROB'T M. THOMSON.
O. A. BARNES.
235 JAMES M. CLARK.
BEN. F. BOURN.

JOHN C. MOORE,
Solicitor and Counsel for These Defendants.

Subscribed and sworn to before me this 6 day of May, 1890.
[SEAL.] JAMES P. NESBIT,
County Clerk.

Said Exhibit G, above referred to, is in words and figures following, to wit:

EXHIBIT "G."

M., I. & N. R. Co.
to
F. L. & T. Co., N. Y.

This indenture, made and entered into this first day of June, in the year of our Lord one thousand eight hundred and seventy, by and between the Missouri, Iowa & Nebraska Railway Company, a corporation duly incorporated, organized, and existing under and by virtue of the laws of the States of Missouri and Iowa, party of the first part, and the Farmers' Loan and Trust Company of the city of New York, trustees for certain creditors, holders, and owners of the bonds of said railway company, party of the second part, witnesseth:

That whereas the said party of the first part owns and posses- the power under and by virtue of the laws of the State- of Missouri and Iowa to construct, maintain, and operate a continuous line of first-class railway from the city of Alexandria, on the Mississippi river, to a point on the Missouri river, in the State of Iowa,
236 near Nebraska City, in the State of Nebraska; and whereas the said party of the first part has commenced the construction of said line of railway between said points and has a large portion of said line graded, with the streams and colverts bridged, and the cross-ties purchased and received along the line thereof and ready for laying the track thereon; and whereas the said party of the first part, by an order and by resolutions duly passed by its board of director- at a regular and lawful meeting held at the office and principal place of business of said company, in Centerville, Iowa, on the 13th day of May, A. D. 1870, has decided, for the purpose of obtaining funds to complete the said line of railway and the purchase of the iron and other materials to be used therein and equip-

ments for future motive power, rolling stock, and machinery for the said railway, to make, execute, and deliver its six thousand bonds of and for the sum of one thousand dollars each, and bearing date June 1st, A. D. 1870, and to sell and disposes of the same and thereby become indebted to divers persons, bodies politic or corporate, who shall become the holders thereof in the just and full sum of six million dollars, and which bonds and indebtedness shall have a priority or lien upon the corporate property, railway, and franchises of every kind and description now acquired and owned by the party of the first part, and the payment thereof, together with the interest accruing thereon, to be secured by deed of trust in first mortgage on all the corporate property, railway, and franchises of the said party of the first part as aforesaid and as hereinafter set forth, and that a sinking fund of thirty thousand dollars annually, to provide for the payment of said bonds, shall be formed by setting apart on the first day of June, A. D. eighteen hundred and seventy-five, and each and every year thereafter on the first day of
237 June, the sum of thirty thousand dollars. This sinking fund shall be kept & invested by three commissioners, one of whom shall be the president of the company and the other two shall be members of the board of directors of said company. They shall invest the said fund in the bonds of said railway company; otherwise, at the discretion of the commissioners, in stocks of the United States; said bonds to be payable in the city of New York on the first day of June, one thousand nine hundred and ten, together with interest thereon at the rate of seven per cent. per annum, payable semi-annually in gold, free from United States income tax, in the city of New York, on the first days of June and December in each and every year, in accordance with the coupons thereunto annexed; said bonds to be numbered consecutively from one to six thousand, both inclusive, and are to stand equally and ratably secured according to their respective amounts, without preference of one over the other, and all of which are to be in the following form; to wit:

UNITED STATES OF AMERICA, *States of Missouri and Iowa.*

No. —. $1,000.

Missouri, Iowa and Nebraska Railway Company first-mortgage, forty years seven per cent. gold-bearing-sinking-fund bond.

Known all men by the- presents, that the Missouri, Iowa & Nebraska Railway Company is indebted to the Farmers' Loan & Trust Company of the city of New York, or bearer, in the sum of one thousand dollars, which said company promises to pay to them or the bearer hereof, on the first day of June, one thousand nine hundred and ten in the city of New York, with interest thereon, from the first day of June, A. D. eighteen hundred and seventy, until the said sum shall become fully due, and be paid at the rate of seven per centum per annum payable semi-annually, in gold, free from United States income tax, in the city of New York, on

the first days of June and December, in each year, on the
238 presentation and surrender of the annexed coupons as they severally become due, and in case of the non-payment of any half-yearly installments of interest which shall have become due and payable and payment shall have been demanded, if such default shall continue for six months after the maturity of the said installments, the principal of this bond shall become due in the manner and with the effect specified in the deed of trust in first mortgage securing such payment. This bond is one of an issue of six thousand bonds of like tenor date and amount numbered consecutively from one to six thousand, both numbers inclusive, and amounting in the aggregate to six million dollars, and has a special first lien on all of the railroad property, equipments and franchises of the said company, and the full and final payment of which, and the interest thereon is secured by deed of trust in first mortgage dated the first day of June eighteen hundred and seventy, duly executed and recorded in the proper offices in the States of Missouri and Iowa, conveying to the Farmers' Loan and Trust Company of the City of New York, in trust all the corporate property railway and franchises of every kind and description now acquired and owned — to be hereafter acquired and owned, by said company within the States of Missouri and Iowa, together with all and singular the equipments, appurtenances, lands and tenements therein mentioned, as by reference thereto will more fully appear, the holders hereof will also be entitled to the benefit and security of a sinking fund of thirty thousand dollars provided for and described in said deed of trust, to be set apart on the first day of June, 1875, and each and every year thereafter for investment out of the earnings of said company for the redemption of the six million dollars secured by said deed of trust, this bond shall be
239 transferable by delivery or it may be registered as to its ownership on a registry to be kept by the company and being so registered it then shall be transferable only on the books of the company, until released from such registry on said books by its owner, this bond shall not become obligatory until it shall have been authenticated by a certificate annexed to it, duly signed by the trustees.

In witness whereof, the said railway company has caused its corporate seal to be hereunto affixed, and the same to be attested by the signature of its president and secretary: and has also caused the coupons hereto annexed to be signed by its secretary, on this first day of June in the year of our Lord one thousand eight hundred and seventy.

——— ———, *President.*
——— ———, *Secretary.*

I hereby certify that this bond is one of the series of six thousand bonds described in and secured by the deed of trust in the first mortgage above mentioned, and that said deed of trust in first mortgage securing the same has been duly executed, recorded, and delivered.

——— ———, *Trustee.*

With seventy-nine coupons for the semi-annual interest to become due thereon, substantially in the following form and differing as to the term and time of payment only, to be annexed thereto, to wit:

$35. $35.

The Missouri, Iowa and Nebraska Railway Company will pay the bearer hereof thirty-five dollars, in gold, in the city of New York, on December 1st, 1870, being semi-annual interest on bond No. —.

C. W. BOWEN, *Secretary.*

240 Now, therefore, this indenture witnesseth that said party of the first part, for the purpose and in order to fully secure the payment of the said sum of money mentioned in said bonds and each and every one of them, with the interest thereon, according to the true intent and meaning thereof, and in consideration of the premises and of one dollar paid to them by the party of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, transfer, and confirm, unto the Farmers' Loan and Trust Company, the party of the second part, their successor or successors, in trust and for the uses hereby created, all the right, title, and interest of the party of the first part, acquired in any and all manners whatever, of, in, and to all and singular the pieces or parcels of land situated, lying, or being in the States of Missouri and Iowa, now purchased and acquired or which may at any time hereafter be purchased and acquired for the railway of the said party of the first part, extending from the city of Alexandria, on the Mississippi river, in the State of Missouri, through the counties of Clark and Scotland, in said State of Missouri, and the counties of Van Buren, Davis, and Appanoose, and thence west, through the said county of Appanoose and the counties of Wayne, Decatur, Ringgold, Taylor, Page, and Fremont, in the State of Iowa, to a point on the Missouri river, in the State of Iowa, near Nebraska City, in the State of Nebraska, and all and singular the railroad now surveyed and being constructed and leading from the Mississippi to the Missouri rivers and lying and being in the said States of Missouri and Iowa, together with all and singular the right of way for said road now belonging or to belong to the party of the first part, and also the right of said party
241 of the first part to construct and maintain along said route a railroad, as well as all other rights, privileges, and franchises belonging to said party of the first part in, upon, or pertaining to said railroad; including its road-bed, made or to be made; gradings, embankments, excavations, sidings, culverts, bridges, crossties, superstructures, track or tracks, iron, rails, fences, stations, and station-houses, depot grounds, and all the work, materials, and operations for the constructions of said railroad now made or acquired or which may at any time be made, done, or acquired by the said party of the first part and which in anywise appertains or shall

appertain to said railroad, and all and singular the buildings, machine shops, engine-houses, depots, *turnvato*, wood and water stations, water tanks, and all other buildings or structures, improvements, and constructions of every nature and descriptions now belonging to or to belong to the said party of the first part and in anywise appertaining or to appertain to said railroad, together with all and singular its alienable franchises, emoluments, income, and advantages, tenements, and hereditaments, appurtenances, and all and singular the equipments or furniture, motive power, rolling stock, engines, tenders, cars, carriages, tools, fixtures, and machinery of every kind, nature, and description now belonging to, owned, possessed, or acquired or hereafter to be owned, possessed, or acquired by the party of the first part, and the reversion*er* and reversion*ers*, remainder and remainders, rents, issues, and profits thereof, and all lands and real estate to which said party of the first part may become entitled through or by reason of the construction of said railroad, and all the estate, right, title, and interests, property, possessions in law or in equity of the said party of the first part now acquired or hereafter to be acquired, together with all and singular the rights, privileges, corporate
242 property and franchises of said railway company, each and every part and parcel thereof, and all the appurtenances to the above-described premises belonging or in anywise appertaining; to have and to hold the said granted premises unto the said party of the second part and to their successor or successors forever, in trust, nevertheless, and for the use and purpose in this indenture expressed and declared, provided always, and these presents are upon the express condition, that if the said party of the first part and its successors shall well and truly pay or cause to be paid to the holders of its said bonds so to be issued as aforesaid and each and every of them the principal sums of money and the interest thereon, as therein mentioned and set forth, and shall well and truly keep, fulfill, and perform all and singular its covenants, promises, stipulations, and agreements as therein and herein contained, according to the true intent and meaning thereof, that then and from thence these presents and estate hereby granted shall cease, determine, and be null and void, and the right to the premises hereby conveyed shall revert to and revest in said party of the first part without any acknowledgement of satisfaction, reconveyance, reentry, or other act; and this indenture further witnesseth that the premises hereby granted, bargained, and described and each and every part and parcel thereof, with the appurtenances, are granted, bargained, and conveyed unto them, the said party of the second part, and their successor or successors in the trust hereby created upon the trust terms, conditions, and agreements and to and for the uses, interest, and purposes following—that is to say, that the actual possession, use, management, and control of the said railroad and premises hereby granted shall be and remain with the said party of the second part or their successor or successors in the trust
243 hereby created so long as its bonds shall remain without default or forfeiture and said party of the first part shall per-

form and keep the covenants and stipulations therein or herein contained, and the said party of the first part for itself and its successors doth covenant and agree to pay unto the holders of the said bonds respectively the said principal sums of money and interest thereon as therein mentioned and expressed; and if any default should be made in the payment of said interest or any part thereof on any day whereon the same is made payable, as expressed in said bonds and the coupons thereto annexed, and should the same remain unpaid and in arrears for the space of six months, then and from thenceforth—that is to say, after the lapse of the said six months—the said principal sums named in said bonds, with all arrearages of interest thereon, shall, at the option of the holder or holders thereof of more than one-half the amount of said bonds then outstanding, expressed in writing to the said party of the second part, their successor or successors, become and be due and payable immediately thereafter, although the period therein limited for the payment thereof may not then have expired, anything therein or herein contained to the contrary thereof in anywise notwithstanding; and if any default should be made in the payment of the principal sums named in said bonds or the interest that may grow due thereon or any part of either the said principal or interest on any day whereupon the same is made payable as therein mentioned and expressed, and should the same remain unpaid for the space of six months thereafter, or if said party of the first part shall fail well and truly to keep, fulfill, and perform all and singular its other covenants, promises, and stipulations therein or herein contained according to the true intent and meaning thereof, that then and from thenceforth it shall be
244 lawful for and shall be and become the duty of the said party of the second part, their successor or successors in the said trust, upon the written request of the holders of more than one-half of the amount of said bonds then outstanding, to enter into and upon and take possession of all and singular the said premises, property, and franchises of every nature and description herein granted and conveyed, and, as attorneys-in-fact or agents of the said party of the first part, by themselves, their agent or agents or substitutes, duly constituted, have, use, enjoy, and operate the same, making from time to time all needful repairs, alterations, and additions, and after deducting the expenses of such use, repairs, alterations and additions, and the costs and charges of such taking possession and a reasonable compensation for the services of said trustees on such taking possession, and while so in possession, apply the proceeds thereof to the payment of the principal and interest of said bonds, issued hereunder, remaining unpaid and which may have become due, and upon the written request of the holders of more than one-half of the amount of said bonds which shall then be outstanding and unpaid, and in which case default shall have been made in any manner as aforesaid, it shall be lawful and be and become the duty of the said party of the second part, their successor or successors, to sell or cause to be sold the said premises, real and personal estate, rights, franchises, and property of every

nature and description hereby granted and all benefits and equity of redemption of the said party of the first part, its successors or assigns, therein, at public auction, in the city of Keokuk, in the State of Iowa, or in the city of New York, as the said trustees, their successor or successors, may elect, after first giving twelve weeks' notice of said sale by publishing the same in at least one
245 daily newspaper published in the city of New York and in two daily newspapers published in the city of Keokuk, and on such sale, as the attorneys of the said party of the first part for that purpose by these presents duly constituted and appointed, to make, execute, and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in law for the same in fee simple, which shall forever be a perpetual bar, both in law and in equity, to the said party of the first part, its successors and assigns, and all other persons, associations, bodies corporate or politic claiming or to claim by, *form*, or under them or either of them, of all rights, interests, or claims of, in, or to the said premises, rights, or franchises, or any part or parcel thereof. The amount of the bid or purchase-money of said sale may be paid and satisfied in whole or in part by the outstanding bonds or any of them issued hereunder, and the same shall be taken and received in whole or in part payment and satisfaction by the party of the second part, their successor or successors, according to their value, to be ascertained and determined by the net amount arising from such sale as compared with the amount of outstanding bonds issued hereunder as aforesaid; and the said party of the second part, after deducting from the proceeds of such sale the costs, charges for advertisements, and expenses thereof of said sale and of managing said property, shall apply so much of the proceeds as may be necessary to the payment of said principal and interest due and unpaid on the residue of said outstanding mortgage bonds issued hereunder and not used in payment of said bid and purchase as aforesaid, and shall pay over the remainder or overplus of the purchase-money proceeds of such sale, if any then shall be, to the party of the first part, its successors or assigns, and
246 all other persons, associations, bodies corporate or politic claiming or to claim the premises or any part thereof by, from, or under them or any or either of them; and the said party of the first part doth hereby covenant for itself and its successors that in no case shall it or they claim or take advantage of any stay, valuation, or appraisement laws, all benefits of which are expressly waived, or obtained or apply for any injunction or stay of proceedings or other process to prevent, postpone, or delay such entry, use, enjoyment, operation, or sale as aforesaid, and in case of any such taking possession or proceeding to sell the said mortgage-premises for default in payment of interest only, if the said party of the first part, before the said bonds shall become payable and before such sale shall be made, shall pay and satisfy all interest then in arrears on any of said bonds, and shall also pay and discharge all costs, expenses, and disbursements and pay all said reasonable compensation then and theretofore incurred by reason of such de-

fault, *and* the said trustees, upon such evidence thereof made to their satisfaction, shall thereupon discontinue such proceeding and restore possession of the said mortgaged premises to the said party of the first part, to be held subject to these presents in like manner as if said default had not happened; and the said party of the first part further covenants and agrees for itself, its successors, and all and every other person or persons, associations, bodies politic or corporate whatsoever or whosoever lawfully or equitably claiming or deriving any estate, right, title, or interest of, in, and to the premises hereby granted or intended so to be, or any part thereof, by, from, under, or in trust for it or them, upon the reasonable request of the said party of the second part, their successor or successors, to make, execute, do, and deliver, or cause to be made, done, execute-,
247 and delivered, all and every such further and reasonable acts, conveyances, and assurances in the law, and particularly for the conveyance of all lands, depot grounds, rights of way, and such other property, including any lands that may be granted or donated to aid the construction of said railroad or may in any manner be hereafter acquired by the party of the first part for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, their successor or successors, for the uses, interest, and purposes herein set forth and declared as by the said party of the second part, their successor or successors, or their counsels learned in the law shall be reasonably advised, devised, and required, and also that it hath not *been* made, done, committed, executed, or suffered any act or acts, thing or things, whatsoever whereby or by means whereof the above mentioned and described premises, or any part or parcel thereof, now are or at any time hereafter shall or may be impeached, charged, or incumbered in any manner or way whatsoever; the said party of the first part doth hereby for itself and it- successors further covenant and agree to and with the said party of the second part that the amount of bonds issued hereunder shall not exceed in the aggregate the sum of six million dollars upon the whole line of said railway from the Mississippi river to said point on the Missouri river, a distance of about three hundred miles, and that this said trust and the security hereby intended shall extend to such mortgage bonds only as shall be certified and countersigned by the trustees aforesaid, their successor or successors, and that said trustees shall certify and countersign the whole or any part of said six thousand bonds at any time when requested so to do by the party of the first part, the same being first signed by the president and secretary and
248 sealed with the corporate seal of the said party of the first part.

It is also especially agreed and understood that all of said bonds to be issued hereunder shall be upon an equality so far as regards security for the payment thereof by these presents, notwithstanding the same may be issued at different times, and none of said bonds shall be entitled to priority, and these presents and everything herein contained shall be entitled to priority, and these presents and everything herein contained shall have effect and inure as a security for said bonds equally and without preference, whether

issued at one and the same time or at different times. It is also mutually agreed that the said party of the second part, their successor or successors in the trust hereby created, shall not be responsible at any time for the default or misconduct of his or their agents to be employed by him or them in his or their discretion, and shall be held bound to the exercise of ordinary and reasonable care and diligence only in the management thereof, and that the said party of the second part and their successors in the trust hereby created shall be entitled to receive proper and reasonable compensation for every labor or service performed and expense, disbursements, and damages incurred by him or them in the discharge of their said trust in case they shall take possession of said premises or any part thereof or manage the same, and shall not in any manner be liable or responsible for any loss or damage unless the same shall happen by gross neglect or willful malfeasance on their part, and also that in case of death, resignation, or other disability of the said party of the second part or their successor or their successors from time to time at any time hereafter, or in case of the vacancy in the said party of the first — or its successors, to apply to any court of record
249 in the State of Iowa or Missouri or of the United States of adequate jurisdiction to appoint a successor or successors to said party of the second part to fill the vacancy so made in said trust hereby created, and upon such appointment and the acceptance thereof the person or persons, body politic or corporate, so appointed shall become and be vested, for the use and interests and purposes herein set forth and declared, with all the estate, rights and powers, title, and interest in and to the said party of the second part without any other or further assurances or conveyances of the same, and shall perform all the duties of trustees in like manner as if he or they had been named in this instrument as trustees; and the said party of the first part hereby further covenants and agrees with the party of the second part and their successors and with the holders of each and all of the said issues of six millions of dollars of bonds which may be issued that the said party of the first part will create and make a sinking fund for the redemption of such bonds and each of them by setting aside and depositing with three commissioners, to be appointed by the party of the first part for that purpose, from and after the first of June, in the year one thousand eight hundred and seventy-five, and annually thereafter until the maturity of said bonds, the sum of thirty thousand dollars ($30,000); such sinking-fund moneys shall from time to time, under orders of the party of the first part, be invested in the purchase of the bonds so issued or in bonds of the Government of the United States, and the money accruing on any and all of such investments for interest, as fast as the same shall be received, shall be added and paid into said sinking fund and compounded therein continually and reinvested in like manner with the other money of said fund; that the board of directors of said railway company, party of the first part, shall
250 have entire control over the management of said sinking fund and every person in charge of or connected with the same, and shall from time to time direct in what bonds or securities

it shall be invested and at what price or rates and how it shall be kept and the manner — accounts thereof, and shall require ample security to be given to them by any person in charge of its moneys or its securities or bonds for safe keeping; every bond of the said issue of six million of dollars which may be purchased and held by said sinking fund shall remain in full force until the whole of such issue shall have matured or shall have been so absorbed or otherwise redeemed by said party of the first part, and the interests on such bonds held by said sinking fund shall be paid by said railway company regularly as the interest on its other similar bonds is paid.

In witness whereof the said party of the first part hath caused its corporate seal to be affixed hereunto and these presents to be signed by its president and secretary the day and year first above written.

MISSOURI, IOWA & NEBRASKA
RAILWAY COMPANY,
[SEAL.] By F. M. DRAKE, *President.*
C. W. BOWEN,
Secretary of the Missouri, Iowa & Nebraska Railway Company.

STATE OF IOWA,
Appanoose County, } *ss:*

Be it remembered that on this 28 day of June, in the year of our Lord one thousand eight hundred and seventy, before me, the undersigned, K. P. Morrison, clerk of the district court within and for said county and State, and duly authorized by law to take acknowledgments of deeds, etc., personally appeared F. M. Drake,
who is personally to me known to be the same person whose
251 name is subscribed to the above and foregoing instrument of
writing as president of the Missouri, Iowa & Nebraska Railway Company, party thereto, and acknowledged the said instrument to be the act and deed of the said Missouri, Iowa & Nebraska Railway Company, by him as president thereof subscribed for the same; and also at the same time and place personally appeared before me C. W. Bowen, who is well known to me to be the same person whose name is subscribed to the foregoing instrument of writing as secretary of the Missouri, Iowa & Nebraska Railway Company, as party thereto, and acknowledged that he executed the said deed as and for the act and deed of the said Missouri, Iowa & Nebraska Railway Company for the uses and purposes mentioned in said instrument.

In testimony whereof I, K. P. Morrison, clerk of the said court, have hereunto set my hand and affixed the seal of the district court aforesaid this the day and year last above written.

[SEAL.] K. P. MORRISON,
Clerk of the District Court of said County.

Filed for record July 6th, 1870.

JOHN C. SMITH, *Recr.*

F. L. & T. Co. to M., I. & N. R. R. } Acceptance.

Known all men by these presents that the Farmers' Loan and Trust Company of New York hereby accepts and assumes all the obligations mentioned, accepted, and assumed in the foregoing indenture by the party of the second part, to wit, a trust deed of mortgage dated the 1st day of June, A. D. 1870, made by the Missouri, Iowa and Nebraska Railway Company to the Farmers' Loan and Trust Company of New York, conveying the property
252 and franchises of the said mortgagor to the said mortgagee in trust to secure the payment of 6,000 bonds of $1,000 each, and that the said Farmers' Loan and Trust Company make this formal acceptance of the said trusts to remove any doubt which might arise from their not having signed the said trust deed itself, and intending to *find* itself, its successors and assigns, as fully and completely as if it had signed and acknowledged the said trust deed.

In witness whereof the said Farmers' Loan and Trust Company hath caused its corporate seal to be attached and the same to be attested by the signatures of its president and secretary this 27th day of June, 1870.

THE FARMERS' LOAN & TRUST CO.
Attest: R. G. ROESTON.

STATE OF MISSOURI, *County of Scotland,* } ss:

I, C. F. Sanders, circuit clerk and *ex officio* recorder in and for said county, hereby certify that the above is a true copy of the foregoing instrument as the same appears of record in my office in Book Q, page- 423–434.

[SEAL.] Witness my hand and official seal. Done at office, in Memphis, this second day of May, 1890.

C. F. SANDERS,
Cir. Clerk and ex Officio Recorder,
By CHAS. L. MOORE, *Deputy.*

Said Exhibit A, above referred to, is in words and figures following, to wit:

EXHIBIT "A."

253 This agreement, made at the city of New York February 12th, A. D. 1880, by and between the Missouri, Iowa and Nebraska Railway Company, party of the first part, H. C. Thacher, Henry Hill, and George Opdyke, a committee of bondholders of said Missouri, Iowa and Nebraska Railway Company, joint parties of the second part, and the Wabash, St. Louis, and Pacific Railway Company, party of the third part, witnesseth:

I.

The first party hereby covenants:

First. It will complete or cause to be completed with all reasonable dispatch a prolongation of its existing line of railroad from Corydon, Iowa, to a junction with the main line of said third party, either in Page county, Iowa, or in Nodaway or in Atchison county, Missouri, the same to be completed as a first-class railroad, with no grades inclining downward to the west more than sixty feet to the mile, with iron rails of best quality, fifty-six pounds to the yard, with depots, sidings, and other suitable appurtenances, and said first party shall also increase its present equipment in proportion to its increased mileage (a schedule of present equipment is hereto attached); provided, however, that the third party hereto may require that steel rails of fifty-two pounds to the yard shall be substituted for the iron rails above referred to upon said extension from about thirty miles west of Corydon, Iowa, to the junction aforesaid, but in that case said third party shall be bound to pay the cost of said steel rails over and above sixty dollars per ton delivered at New York or at the mill, if purchased in the United States; and it is further provided that the portion of said railroads hereafter to be con-
254 structed shall be regarded as complete whenever the tracks, sidings, building-, and other appurtenances are the same in character as upon that part of said railroad between Corydon and Keokuk and of equal amount in proportion to the distance.

Second. On or before the completion of the aforesaid extension of its road, as the first party hereto may elect, it will procure, if it can, the assent of its directors and shareholders, as required by law, to the consolidation of its capital stock, property, and franchises with the capital stock, property, and franchises of said third party upon such terms that five thousand dollars of preferred stock of said third party and five thousand dollars of common stock of said third party, both, for each mile of the completed road of said first party extending from Keokuk, Iowa, to Corydon, Iowa, and for each mile of the thirty miles from Corydon westward, now under contract, shall be issued in exchange, *pro rata*, for the capital stock of said first party now issued and to be issued, in part payment for construction of said last-named thirty miles, and that preferred and common stock of said third party to the amount of five thousand dollars each per mile shall be issued in part payment for the construction of the prolongation of said first party's railroad from a point thirty miles west of Corydon, Iowa, to the point of junction with the present main line of said third party, as hereinafter more fully set forth.

Third. Said first party will also, as one of the terms of such consolidation and a primary condition of this agreement on its part to be performed, cause all of the holders of its outstanding bonds, themselves or by duly constituted agents or trustees, to enter into covenant for the surrender and cancellation of the same upon receiving in ex-
change therefor bonds of said third party secured by first
255 mortgage upon the entire line of railroad of said first party from Keokuk, Iowa, to the junction aforesaid and bearing

interest at the rate of six per cent. per annum, payable semi-annually, in gold coin or its equivalent, in the city of New York, and issued to an amount not greater than fifteen thousand dollars, par value, per mile of completed road and preferred stock of said third party, as hereinafter provided.

Fourth. It is, however, expressly understood and agreed that said first party, in contracting for the construction of the aforesaid extension of its line, may agree to deliver, in part payment for such construction, first-mortgage bonds of said third party of the series described in the foregoing clause to the amount of fifteen thousand dollars per mile, the same as in said clause it is provided shall be issued upon each mile of said railroad already complete.

Fifth. In case the first and third parties hereto shall agree that the railroad of the first party shall be transferred to said third party before the same is completed to a junction with the main line as aforesaid, then said first-mortgage bonds and preferred and common stock shall be issued and delivered as often as five miles or more of said railroad directly connected with the said completed railroad shall be finished.

Sixth. Said first party will also, as one of the terms of such consolidation on its part to be performed, fully secure and indemnify said third party against all other indebtedness of said first party, so that the railroad of said first party shall be transferred to said third party free from any lien or indebtedness other than that of the mortgage bonds above referred to, and excepting, also, its obligations by way of lease.

Seventh. In the event that said first party shall, for any reason, be unable to secure the requisite consent of its directors
256 and shareholders to such consolidation, then this agreement shall bind said first party to lease its railroad and equipment, completed to said junction and increased as aforesaid, in perpetuity to said third party upon condition that said third party shall fully maintain and operate the same, and shall guarantee and pay interest at six per cent. on the bonds of said first party, secured by said first mortgage on its entire line of railroad from Keokuk to its intersection with the main line of said third party and issued at the rate of fifteen thousand dollars per mile of completed road; and shall, as further rental, pay interest upon a first series of income bonds to be issued by first party to the amount of five thousand dollars per mile of completed road, interest in each year at a rate equal to the dividends paid in that year on the preferred stock of said third party, and shall, as a further rental, pay, upon a series of income bonds to be issued by said first party to the amount of five thousand dollars per mile, interest at the same rate as the dividends paid in that year on the common stock of said third party.

Eighth. If the transfer of the railroad of the said first party to said third party, as above, shall be by lease and not by consolidation, then said first party shall be bound to all of the covenants above set forth with regard to its indebtedness and the completion and increase of its road the same as if the consent requisite to consolidation were secured.

Ninth. In the event of consolidation, so much of the preferred stock of said third party given in exchange for the common stock of said first party, as above provided, or, in the event of lease, so much of the first series of income bonds of said first party as shall be equal to five thousand dollars per mile, or so much of said
257 first party's railroad as extends from Keokuk to a point thirty miles west of Corydon shall be by said first party given and paid to the holders of the present outstanding mortgage bonds of said first party in severalty and due proportion to each of said holders who shall surrender his bonds and accept in lieu thereof new bonds of tenor and amount hereinbefore provided.

II.

The parties of the second part, not individually, but as a committee holding a large majority of the present outstanding bonds of said first party, deposited with them under an agreement of said bondholders, dated December 1st, 1879, and an agreement supplemental thereto of the same date, and to the extent only of their powers under said agreement or as hereafter enlarged by any of the holders of said bonds, do covenant as follows:

First. Upon the transfer, by consolidation or lease, as above provided, of the railroad of said first party to said third party, said second party will surrender all of the present outstanding bonds of said first party which it now holds in trust or may hold, and will receive in lieu thereof new bonds and preferred stock or income bonds, as set forth in the foregoing clauses, it being mutually understood and agreed that the present outstanding bonds of said first party have not been and shall not be issued to a greater amount than twenty thousand dollars per mile of completed road, and that in no event shall said third parties be asked to receive less than three of said new bonds in exchange for four bonds of the series now outstanding.

Second. In the event that so many holders of present outstanding bonds shall refuse their sanction to this agreement that it shall be necessary to foreclose the mortgage whereby they are secured, the second parties will, whenever said railroad and equipment
258 may be offered at judicial sale, bid such sum as is necessary to buy in the same, provided that such sum is not, except at the option of said second parties, to be in excess of eighty per cent. of the par value of said present outstanding bonds.

Third. In the event that a judicial sale of said railroad and equipment to said second parties shall be duly confirmed, then said second parties will convey to said third party the interest acquired at such sale by deed outright or through incorporation of the purchasers and subsequent consolidation or lease, as counsel for third party may advise, receiving in payment therefor the bonds and stock of said third party the same as said first party would have received if the transfer to said third party had been effected without foreclosure.

Fourth. Provided that the above covenant to bid shall become operative only if the holders of the common stock of said first party,

or else said third party or persons authorized by it, shall at least one day before said sale pay or secure to be paid to said second parties whatever amount may by the court ordering such sale be required to be paid in cash, and such further amount as may be needed to make up the dividend payable to holders of bonds not represented by said second party out of the proceeds of such sale if the sale shall be at the full amount of eighty per cent. upon the par value of the present outstanding bonds.

Fifth. The right to pay or secure to be paid to said committee the amount last named shall be exclusively in the holders of the common stock of said first party, who may unite in so doing from the entry of the decree of the sale until twenty days before such sale; after that for ten days exclusively with the holders of bonds
259 represented by said committee or such of them as may unite in so doing, and after that until such sale exclusively with said third party or persons it may appoint for that purpose. Whichever of said parties shall pay in said amount shall be entitled to receive new bonds and stock to which the holders of unrepresented bonds would otherwise have been entitled, and also to share in an amount of common stock of said third party to which said second parties may become entitled, as provided in the seventh clause of said second party's covenants herein.

Sixth. The second party, moreover, reserves to itself the option, in the event it shall become the purchaser at judicial sale of said railroad and property, — complete said railroad to a junction with the main line of said third party and further equip the same, as above provided by said first party to be done; and if said second party shall, within thirty days from the confirmation of said sale, declare its purpose so to do, then said third party shall be bound to pay said second party for completing said railroad and equipments in bonds and stock the same said first party would have been entitled to receive if it had fulfilled its covenants herein.

Seventh. The common stock of said third party, however, which said second party shall in that case be entitled to retain shall be five thousand dollars per mile for that portion only of said railroad between a point thirty miles west of Corydon, Iowa, and the intersection with the main line of said third party, and the remainder of said common stock of said third party, to wit, five thousand dollars per mile between a point thirty miles west of Corydon and Keokuk, shall go to the party advancing funds to said second party, as provided in the fourth and fifth clauses of the covenants of said second party herein.

III.

260 In consideration of the foregoing the third party covenants as follows:

First. Upon the completion of the railroad and increase of equipment of said first party to a junction with the main line of said third party, either by said first party or by said second parties, as above provided, said third party will endeavor to procure the requisite consent of its directors and stockholders to a consolidation with

said first party upon the terms and conditions above mentioned, and will do its part in effecting and carrying out the same.

Second. Failing to obtain such consent, said third party will, upon completion of said railroad and increase of equipment by either said first party or said second party, as above provided, accept a lease thereof upon the terms and condition- above specified, and will do its part in effecting and carrying out the same.

Third. Said third party, moreover, reserves to itself the option in the case said railroad shall be bought in at judicial sale by said second party and said second party shall not within thirty days after confirmation of said sale declare its purpose to complete said road or shall not within ninety days from such declaration enter into a responsible contract for the speedy completion of the same—in that case said party may elect to receive an immediate transfer to itself of said railroad and equipment by consolidation or lease, and itself to provide for completion of the same, and to issue and award in payment therefor the bonds and stock which said second party would for the same work have been entitled to receive.

IV.

261 First. All the parties hereto desiring to afford to each and every holder of the present outstanding bonds of said first party opportunity for a full participation in the benefits of this agreement as any holder of said bonds shall enjoy, it is mutually agreed that holders of said bonds shall be admitted to subscribe and become parties to this agreement, as represented by the second parties hereto, at any time prior to the taking effect of the consolidation of said first party with said third party, or lease from said first party to said third party, or if foreclosure intervene at any time before the entry of such decree.

Second. It is expressly understood and agreed by all the parties hereto that each and all of the covenants made by any of the parties hereto and all contracts made with any of said parties in pursuance of this agrement may be enforced by either of the other parties hereto the same as if made directly and solely with such other party.

In witness whereof the individual parties above named have hereunto set their hands and seals and the corporations above named have caused their several signatures and seals to be affixed hereto and attested by their respective secretaries the day and year above named.

MISSOURI, IOWA & NEBRASKA RAILWAY CO.,

(Signed) By F. M. DRAKE, *President.*

THE WABASH, ST. LOUIS & PACIFIC RAILWAY CO.,

(Signed) By SOLON HUMPHREYS,
Chairman of Executive Committee.

(Signed) GEORGE OPDYKE,
H. C. THACHER,
262 HENRY HILL, *Trustees.*

(Signed) JOHN TELFORD.

(Signed) JOHN TELFORD.

263 Said Exhibit B, above referred to, is in words and figures following, to wit:

EXHIBIT "B."

This indenture of lease, made this 3d day of September, A. D. 1880, by and between the Missouri, Iowa and Nebraska Railway Company, a consolidated corporation of Iowa and Missouri, of the first part, — the Wabash, St. Louis and Pacific Railway Company, a consolidated corporation of Ohio, Indiana, Illinois, and Missouri, of the second part, witnesseth:

The party of the first part, in pursuance of a resolution of its board of directors adopted on the — day of ——, A. D. 1880, and the further authorization of its stockholders thereto, and in consideration of the covenants and agreements on the part of the party of the second part hereinafter contained, does hereby let, demise, and lease unto the party of the second part, its successors and assigns, for the term of ninety-nine years from this date, renewable in like periods forever, at the option of the party of the second part, the railroad of the party of the first part extending from the Mississippi river at Keokuk, Iowa, westerly through and across the States of Iowa and Missouri to a point on the Missouri river opposite Brownsville, Nebraska, as now owned, constructed, or used, or as at any time hereafter the said railroad may be owned, constructed, or used by the said party of the first part, together with all embankments, bridges, turnouts, side tracks, water tanks and fixtures, shops, engine or other houses, turn-tables, engines, cars, machinery, tools, rolling stock, lots, lands, buildings, offices, and all things, real or personal, now owned or used or that may hereafter be owned or used by the said party of the first part in connection with the said railroad and everything appertaining thereto,

264 and all the franchises, powers, privileges, and chartered or other rights of the said party of the first part, so far as the same may be needful or advantageous to the said party of the second part, as lessee of the premises above described, provided that the rights of the party of the first part to any subscription or promise payable on the completion of any part of its railroad is expressly reserved from the above:

To have and to hold the said demised railway and property, real and personal, and franchises, as above provided, unto the said party of the second part, its successors and assigns, to and for the full end and time of ninety-nine years from and after the date of these presents and any and all renewals thereof forever, at the option of the party of the second part, as above set forth.

And in consideration of the premises the party of the second part hereby covenants that it will maintain and operate the said railroad, fully maintaining the present equipment thereof and any further equipment which may be supplied, at the cost of the party of the second part, keeping the said railroad and equipment in good condition and repair for the full term of this lease and of any renewal thereof, and will indemnify and save harmless the said party of the

first part from and against all damages and liabilities whatever in connection with the operation of the same, and will keep full and accurate accounts of all its earnings from the same, which shall at all times be open to inspection by the duly constituted agents or committees of the party of the first part.

The party of the second part further covenants that it will, in each year while said property is held under this lease, set aside from the gross earnings a sum equal to thirty per cent. thereof, and will apply the same as follows:

First. To the payment of all lawful taxes and assessments levied on said property.

265 Second. To the payment of the interest on the mortgage bonds of the party of the first part under its deed of trust or mortgage dated June 1st, 1870, and the supplementary indenture of March 1st, 1875.

Third. To the party of the first part, on the first days of April and October in each year, the balance of said thirty per cent. accruing from the earnings of said property for six months preceding the first days of March and September in each year.

Fourth. The party of the second part moreover expressly guarantees that the interest paid by it upon the mortgage bonds aforesaid of said first party shall not be less than at the rate of four and one-half per cent. per annum upon the par value of said bonds, which said first party stipulates does not exceed three millions twenty-five thousand dollars.

The interest aforesaid shall be paid at the office of the agency of the said second party, in the city of New York, on the first days of April and October in each year, until such time as said bonds shall have been retired by foreclosure or exchange, as hereinafter referred to; but in no case shall this or any of the covenants herein be binding on said second party after it shall, for any cause other than its own acts, be divested of possession under this lease.

It is further mutually declared that this lease is made and accepted in furtherance of an agreement February 12th, A. D. 1880, by and between the first and second parties hereto and the trustees of the holders of the mortgage bonds of the first party hereto, the rental above stipulated of four and one-half per cent. on said bonds of said first party, which have been issued to the amount of twenty thousand dollars per mile of completed road, being an equiva-

266 lent of six per cent. on the fifteen thousand dollars per mile of said railroad in bonds of said first party hereafter to be issued in exchange therefor, as in said agreement provided.

It being found impracticable for said first party to complete its railroad as in said agreement provided, the parties above named have procured the incorporation of a railroad company of Iowa, known as the Iowa, Missouri and Nebraska Railroad Company, to build and have a line of railroad from Prairieville, Iowa, to which point the first party's railroad has been completed, to and beyond the junction with the railroad of the second party hereto, as specified in said agreement.

The second party hereby covenants that the completion of the

railroad of the Iowa, Missouri and Nebraska Railroad Company to such point of junction shall be accepted by it in lieu of the completion of the railroad of the first party hereto, as stipulated for in said agreement, it being mutually stipulated by the parties hereto that — shall continue otherwise in full force and unaffected.

The second party further covenants that in the event that the Iowa, Missouri and Nebraska railroad above mentioned shall be completed to a junction as aforesaid before the exchange of stock and bonds provided for in said agreement shall be made, then the second party will thereafter pay, in addition to the rental hereinbefore provided for the holders of the bonds and stock of said first party, such sum, in lieu of dividends, as in and by said agreement it is provided shall be paid.

It is further expressly understood and agreed that the execution and acceptance of this lease shall constitute the second party the successor and assign of the first party as lessee of the Centerville, Moravia and Albia railroad, and as such, having all the rights and obligations of such lessee, the said second party particularly
267 assuming to pay during such time as the Centreville, Moravia and Albia railroad shall remain in its possession and control the interest guaranteed by the first party upon four hundred first-mortgage bonds as part of the consideration for said lease.

The second party covenants that upon the presentation to it by the owner thereof of any receipt from the Farmers' Loan and Trust Company for the said mortgage bonds of the Missouri, Iowa and Nebraska Railroad Company, given by said Farmers' Loan and Trust Company in pursuance of the plan of reorganization of said company, whereby the three trustees who signed the said agreement of February 12th, 1880, were appointed, it will endorse upon or attach to said receipt the following:

"The Missouri, Iowa and Nebraska railroad has been leased to the Wabash, St. Louis and Pacific Railway Company upon terms which provide for the exchange of bonds covered by the within certificate at the rate of fifteen thousand dollars six per cent. bonds and five thousand dollars preferred stock of said Wabash, St. Louis and Pacific Railway Company for every twenty thousand dollars of said bonds, such exchange to be made only after the title of the lessee therein is perfected, as provided for in said agreement.

"Pending the steps necessary to legalize such exchange the Wabash, St. Louis and Pacific Railway Company is to pay to the holder hereof interest at the rate of four and one-half per cent. on the par value of the bonds covered by this certificate.

"Whenever the Iowa, Missouri and Nebraska railroad shall have been constructed and the cars running thereon from Prairieville, Iowa, to a junction with the said Wabash, St. Louis and Pacific railway, so that said railway shall have a benefit of a continuous line from Keokuk, Iowa, to the junction aforesaid, then from that date, during its tenure under the said lease, the Wabash, St. Louis
268 and Pacific Railway Company shall pay as further rental such further sum as shall equal the dividends declared by said Wabash, St. Louis and Pacific Railway Company upon such

an amount of the preferred stock above referred to as the holder thereof will by the terms of said lease be entitled to receive, the interest aforesaid to be paid at the office or agency of said Wabash, St. Louis and Pacific Railway Company, in the city of New York, on the first days of April and October in each year, commencing April 1st, 1881."

The second party further covenants that upon the deposit of certificates for any number of shares of the common stock of the Missouri, Iowa and Nebraska Railway Company by any stockholder with A. L. Hopkins as trustee, accompanied by a power of attorney to said trustee to hold and vote said stock, the said trustee shall issue to said stockholder a receipt for the same in pursuance of this agreement, and to the effect that when the party of the second part shall become vested with a complete title to the property of the party of the first part it will issue to said stockholder in exchange for the stock so deposited the common stock of the said Wabash, St. Louis and Pacific Railway Company in the ratio that five thousand dollars of its said stock per mile on the line of the said Missouri, Iowa and Nebraska railway from Keokuk to Prairieville, Iowa (being 148½ miles), shall bear to the total issue of the stock of the party of the first part, and that — meantime if the railroad of the Iowa, Missouri and Nebraska Railroad Company (now in process of construction) shall be completed from Prairieville, Iowa, to a junction with the railway of the Wabash, St. Louis and Pacific Railway Company, so that said company shall enjoy and use a continuous railway from Keokuk, Iowa, to the junction of above named, then from that date until the exchange above mentioned shall be made (so long as in possession under this lease) the said company
269 will pay to the holder of such certificate a sum equivalent to the dividends which said company may declare upon the same amount of common stock.

It is further stipulated and mutually agreed that before entering upon the back of the above-described receipts of the Farmers' Loan and Trust Company for the said Missouri, Iowa and Nebraska bonds the guaranty aforesaid or attaching the certificate of guaranty thereto the said receipts for bonds shall first have stamped or written thereon—

"Subject to an agreement made by the within-named trustee with the Wabash, St. Louis and Pacific Railway Company for a consolidation or lease of the Missouri, Iowa and Nebraska railroad."

In witness whereof the first and second parties above named have caused their seals and signatures to be hereto affixed by their respective presidents and secretaries the day and year above written.

MISSOURI, IOWA AND NEBRASKA RAILROAD COMPANY,
By F. M. DRAKE, *President.*
THE WABASH, ST. LOUIS AND PACIFIC RAILWAY COMPANY,
By SOLON HUMPHREYS, *President.*

Said Exhibit C, above referred to, is in words and figures following, to wit:

EXHIBIT "C."

This indenture, made and entered into this first day of March, A. D. 1881, by and between the Missouri, Iowa & Nebraska Railway Company, a consolidated corporation of Missouri and Iowa,
270 party of the first part, and the Mercantile Trust Company, as trustee, of the city of New York, party of the second part, witnesseth:

Whereas the first party heretofore executed and delivered to the Farmers' Loan and Trust Company, trustee, a certain mortgage or deed of trust bearing date the first day of June, 1870, whereby the railroad, property, and franchises of said first party were mortgaged to said The Farmers' Loan and Trust Company, trustee, to secure six thousand first-mortgage bonds of the Missouri, Iowa and Nebraska Railway Company for one thousand dollars each, falling due on the first day of June, 1910, and payable at the office of said trustee, in the city of New York, with the half-yearly installments of interest thereon, at the rate of seven per cent. per annum, three millions twenty-five thousand dollars of said bonds only having been issued; and

Whereas, by an agreement dated February 12th, 1880, between the Missouri, Iowa and Nebraska Railroad Company, of the first part, and H. C. Thacher, Henry Hill, and George Opdyke, a committee of the bondholders of said last-named company, of the second part, and the Wabash, St. Louis and Pacific Railway Company, of the third part, the Missouri, Iowa and Nebraska Railway Company did agree to effect the consolidation of its capital stock, property, and franchises with the capital stock, property, and franchises of the Wabash, St. Louis and Pacific Railway Company, if the assent of the directors and shareholders of said company thereto, as required by law, could be procured; and in the event of the inability of the said Missouri, Iowa and Nebraska Railway Company to secure the requisite assent of its directors and shareholders to such proposed consolidation, then the said Missouri, Iowa and Nebraska Railway Company did bind itself by said agreement to lease
271 its railroad and equipment in perpetuity to said Wabash, St. Louis and Pacific Railway Company upon certain conditions in said agreement set forth; and

Whereas, in furtherance of said agreement and in pursuance of a resolution of its board of directors, duly adopted, and the authorization thereto of its stockholders, the Missouri, Iowa and Nebraska Railway Company did demise and lease its railroad, extending from the Mississippi river to Keokuk, Iowa, through and across the States of Iowa and Missouri, to a point on the Missouri river opposite Brownsville, Nebraska, with the franchises, property, and everything appertaining thereto, unto the Wabash, St. Louis and Pacific Railway Company, by indenture of lease bearing date the third day of September, 1880, for the term of ninety-nine years, upon the terms and conditions in said indenture set forth; and

Whereas, in and by said agreement of February 12th, 1880, the Wabash, St. Louis and Pacific Railway Company (among other things) did promise, in the event of obtaining title as lessee to the railroad, property, and franchises aforesaid of the Missouri, Iowa and Nebraska Railway Company, to execute its mortgage bonds to bear interest at six per centum per annum, principal and interest payable in gold or its equivalent in the city of New York, secured by first mortgage on the railroad and property of the Missouri, Iowa and Nebraska Railway Company, and issue the same to an amount not exceeding fifteen thousand dollars, par value, per mile of said railroad, the said first party having in said agreement stipulated and it being by said second and third parties understood that the length of said railroad then complete was one hundred and forty-eight and one-half miles, the trustee of said bonds to be retired being, moreover, in possession of funds to complete three additional miles of said railroad, so that the whole of said
272 outstanding bonds could be retired by new bonds, issued by the said Wabash, St. Louis and Pacific Railway Company at the rate of fifteen thousand dollars for each mile of completed railroad as aforesaid; and

Whereas, since the date of the contract and agreement aforesaid, it has been found, on measurement, that the completed road of the Missouri, Iowa and Nebraska Railway Company is but one hundred and forty-three miles and a half in length, thus necessitating the issue of bonds exceeding fifteen thousand dollars a mile, but not over sixteen thousand dollars a mile of such completed portion; and

Whereas said bonds were by the terms of said agreement to be exchanged for bonds of the Missouri, Iowa and Nebraska Railway Company, secured as aforesaid by its mortgage of June 1st, 1870, at the rate of fifteen thousand dollars six per cent. bonds and five thousand dollars preferred stock of the Wabash, St. Louis and Pacific Railway Company for every twenty thousand dollars of said bonds of the Missouri, Iowa and Nebraska Railway Company, and the said Missouri, Iowa and Nebraska Railway Company did agree that it would cause all the holders of its then outstanding bonds, amounting to three millions and twenty-five thousand dollars, to enter into covenants for the surrender, cancellation, and exchange of the same, as in said agreement provided; and

Whereas, the Wabash, St. Louis and Pacific Railway Company having as aforesaid obtained title by lease to the railroad, property, and franchises of the Missouri, Iowa and Nebraska Railway Company, the stockholders of the Wabash, St. Louis and Pacific Railway Company, at a meeting of said stockholders called by the board of directors of said company, held at its principal place of business in the city of St. Louis, in the State of Missouri, on the 20th
273 day of November, 1880, full notice of the time, place, and object of said meeting having been given for more than sixty days prior to the time of said meeting in the manner required by law, by a resolution passed by the concurrent votes of the holders of more than two-thirds of all the stock of said Wabash, St. Louis

and Pacific Railway Company (which resolution has been duly recorded, as required by law), did authorize and direct the execution of its bonds to such amount as should be required, not exceeding two millions three hundred thousand dollars, for the purposes aforesaid, conditioned and bearing interest as aforesaid, and did authorize the same to be issued and to be exchanged on the terms aforesaid for the outstanding bonds hereinbefore mentioned of the Missouri, Iowa and Nebraska Railway Company; and

Whereas said Wabash, St. Louis and Pacific Railway Company has, in pursuance of said resolution of its stockholders and of the order of its board of directors and in furtherance of said agreement, executed its twenty-two hundred and sixty-nine bonds, each for the sum of one thousand dollars (being at the rate of fifteen thousand eight hundred and eleven dollars and eighty-four cents or thereabout per mile on one hundred and forty-three miles and a half of completed road), conditioned as aforesaid, with coupons or interest warrants attached thereto, and placed the same in the hands of the Mercantile Trust Company, said trustees, for the purpose of exchange, as aforesaid; and

Whereas said bonds are numbered from one to twenty-two hundred and sixty-nine, both inclusive, and are, together with the certificates of the trustee appearing thereon and the coupons attached thereto, substantially in the following form:

Wabash, St. Louis and Pacific Railway Company First-Mortgage Bond, Iowa Division.

274 Know all men by these presents, that the Wabash, St. Louis and Pacific Railway Company is indebted to the Mercantile Trust Company, or bearer, in the sum of one thousand dollars in gold coin of the United States of America which said sum said company hereby promises to pay to said The Mercantile Trust Company, or the bearer hereof, on the first day of March, A. D. 1921, at the office or agency of said company in the city of New York, with interest thereon at the rate of six per centum per annum, payable semi-annually in United States gold coin in the city of New York, on the first days of March and September in each year, on the presentation and surrender of the interest coupons hereto annexed, as they severally become due. The said sums of principal and interest to be paid to the holder hereof free and clear of all taxes and assessments which the said company may by lawful authority be required to withhold from the owner hereof, the said company hereby agreeing to pay such tax in addition to said interest. This bond is one of twenty-two hundred and sixty-nine of like date, amount and conditions, all of which are executed by said railway company for the purpose of being exchanged for certain bonds issued by the Missouri, Iowa and Nebraska Railway Company, a consolidated corporation of Iowa and Missouri, and bearing date June 1st, A. D. 1870, which said bonds are secured by a first mortgage or trust deed upon the railroad property and franchises owned by said last-named company. This entire issue of bonds is secured

by a mortgage or deed of trust, executed by the Missouri, Iowa and Nebraska Railway Company, the owner of said railroad, to the Mercantile Trust Company, trustee, bearing date March 1st, A. D. 1881, and covering all the railroad property and franchises owned by the Missouri, Iowa and Nebraska Railway Company extending from Keokuk, Lee county, Iowa, to Van Wert, Decatur county, Iowa, about one hundred and forty-three miles and one-half in length. Said mortgage is a first lien upon the said
275 railroad, except that of the mortgage securing the bonds to be received in exchange as aforesaid, so that said mortgage will be a first mortgage whenever all of said bonds have been exchanged. All the bonds aforesaid of the Missouri, Iowa and Nebraska Railway Company that shall be exchanged for bonds of this issue, shall be properly stamped and retained by said trustee for the protection of the persons so exchanging, and no bonds of this issue shall be sold or disposed of by said trustee except in exchange as aforesaid, and not in excess of sixteen thousand dollars per mile of said railroad. If default shall occur in the payment of the interest upon any bonds of this issue, and such default shall continue for six months, the principal of all of said bonds shall become due in the manner and with the effect provided in said mortgage or deed of trust. This bond is payable without relief from any extension, stay or appraisement laws now existing or that may hereafter be enacted. This bond shall not be obligatory until authenticated by the certificate of said trustee. It is, however, agreed between the said company and the holder of this bond that no liability thereon shall be enforced against any officer or stockholder of said company, or against the estate of any such officer or stockholder, by virtue of any law of any State whatever, it being agreed that such officers and stockholders do not assume any personal liability on this bond.

In testimony whereof, said Wabash, St. Louis and Pacific Railway Company has caused its corporate seal to be hereunto affixed, and these presents to be executed by its president and signed by its secretary, this first day of March, A. D. 1881.

Form of Coupon.

On the first day of ——, A. D. 18—, the Wabash, St. Louis and Pacific Railway Company will pay the bearer, at its office in
276 the city of New York, thirty dollars, being interest for six months on bond No. —, Iowa division.

—— ——, *Secretary.*

Trustee's Certificate.

This is to certify that this bond is one of twenty-two hundred and sixty-nine bonds of one thousand dollars each, secured by and mentioned in the mortgage within referred to.

THE MERCANTILE TRUST COMPANY, *Trustee*,
By —— ——, *President.*

And whereas a meeting of the board of directors of said first party was held at the city of New York on the 24th day of May, 1881, full

notice of the time, place, and object of said meeting having been given in the manner required by law, at which meeting the directors of said Missouri, Iowa and Nebraska Railway Company did, by a resolution duly passed, authorize and direct the execution of a mortgage or deed of trust by said first party, covering and embracing the railroad, property, and franchises owned by said first party, to secure said twenty-two hundred and sixty-nine bonds of the Wabash, St. Louis and Pacific Railway Company, executed and issued as aforesaid, pursuant to said agreement:

Now, therefore, in pursuance of the resolution aforesaid and of the order of the board of directors, and for the purpose of securing the payment of the principal and interest of said twenty-two hundred and sixty-nine bonds of the Wabash, St. Louis and Pacific Railway Company and the coupons attached thereto, and in furtherance of said agreement of the 12th day of February, 1880, and the said lease of the third day of September, 1880, and in consideration of the premises and of the sum of one dollar in hand paid by the said The Mercantile Trust Company, trustee, the Missouri, Iowa and Nebraska Railway Company, the party hereto of the first
277 part, hath this day granted, bargained, sold, released, barveyed, and confirmed, and by these presents doth grant, congain, sell, release, convey, and confirm, unto the said The Mercantile Trust Company, as trustee, and to its successors in said trust—

All and singular the railroad of the party of the first part, extending from Keokuk, Lee county, Iowa, to the south line of said county and State; thence through the counties of Clark, Scotland, and Schuyler, in the State of Missouri, to the north line of said State; thence in the State of Iowa through the counties of Appanoose, Wayne, and Decatur to Van Wert, said railroad being in the aggregate about one hundred and forty-three and one-half miles in length, together with all and singular the road-bed, right of way, tracks, side tracks, turnouts, stations, depots, and depot grounds, shops, engine-houses, coal-house, fuel-houses, and all lands, structures, and appurtenances intended for the use of the railway so described, and all embankments, fences, culverts, bridges, freight-houses, and other structures intended as aforesaid, and all locomotives, freight and passenger cars, hand cars, gravel and construction cars; all machinery, tools, implements, and materials intended for the use of said road, intending to include all interest, property, estates, rights, and franchises belonging to the Missouri, Iowa and Nebraska Railway Company, with such additions and improvements as the party of the first part and the Wabash, St. Louis and Pacific Railway Company shall add thereto, and no more:

To have and to hold all and singular the premises, rights, franchises, real and personal property hereby conveyed, with the appurtenances thereunto belonging, unto the said The Mercantile Trust Company and to its successors in said trust forever; in trust, however, for the person or persons and bodies politic or cor-
278 porate who shall at any time become the purchasers or holders or owners of the said twenty-two hundred and sixty-

nine bonds or any part thereof or any of the coupons attached thereto.

If the said Wabash, St. Louis and Pacific Railway Company or its successors or assigns shall well and truly pay or cause to be paid the several sums of money specified in the several bonds hereinbefore described, as well the principal as the intallments of interest, according to the tenor and effect of said bonds and of each and every of them, or if said bonds and the interest payable thereon become in anywise paid or satisfied, then and in such case the estate, right, title, interest, and demand of said party of the second part, its successors in said trust and assigns, shall cease, determine, and become void; otherwise to be and remain in full force and virtue in law and for the benefit and security of the holders of said bonds and each of them.

Until default be made in payment of the principal or interest of said bonds or of some of or any of them, the said Wabash, St. Louis and Pacific Railway Company shall be permitted to possess, operate, manage, and enjoy said railroad, with its appurtenances, and to take and use the rents, incomes, tolls, issues, and profits thereof, under, by virtue of, and in accordance with the terms and conditions of said lease, in the same manner and with the same effect as if this deed had not been executed. In case default shall be made in the payment of any installment of interest accruing on said bonds or any of them, and such default shall continue for a period of six months after the maturity thereof, it shall be lawful for said party of the second part or its successors in said trust, by themselves, their agents or attorneys, to enter upon, take possession of, manage, operate, and control the railroad property hereby conveyed, owned, or held by
279 lease, contract, or otherwise, by superintendents, receivers, and managers thereof, making from time to time all needful repairs, replacements, and such alterations, additions, and improvements as may seem to be judicious and proper, and to collect and receive all rents, tolls, incomes, issues, and profits thereof, and after deducting the expenses of operating said railroad and property and leasehold interests and all costs of improvements and any taxes that may have accrued thereon, as well as just and reasonable compensation for its own services in and about the premises, to apply the money arising therefrom to the payment of interest in the order in which it becomes due, and ratably, to the persons entitled thereto, and when said interest so in default and any installment of interest subsequently maturing shall be paid up, then said party of the second part shall restore the possession of said railroad to the said party of the first part or to the Wabash, St. Louis and Pacific Railway Company, the lessee thereof.

If default shall occur in the payment of any installment of interest, and such default continue for the space of six months after maturity and demand thereof, then, if a majority in value of the holders of said bonds then outstanding and secured by this mortgage shall determine and notify said trustee that they require that the principal of all of said bonds become at once due and payable,

said bonds shall thereby become due and payable, notwithstanding any clause contained therein to the contrary, and if said principal sum shall become due and not paid according to the tenor of said bonds, and upon written notice by the holders of a majority of the bonds issued and outstanding under the authority hereinbefore mentioned, the said trustee shall have the power to enter upon and take
possession of said railroad, with the appurtenances, and all
280 and singular the property and franchises hereby mortgaged,
and the lessees or agents of the said first party are hereby authorized and required to deliver up the same, and said trustees shall cause said mortgaged premises to be sold at public auction at the city of Keokuk, Iowa, or the city of New York, as may be directed by the holders in interest of a majority of said bonds, giving at least sixty days' notice of the time and place and terms of sale and of the specific property to be sold, publishing the same in one daily newspaper in each of said cities for sixty days' prior to said sale, and to adjourn said sale from time to time if necessary in the opinion of said trustee, and if the same shall be adjourned to sell without further notice of the time and place of sale, and to execute to the purchaser or purchasers a good and sufficient deed in fee simple for the same, which shall be a bar against the party of the first part and all persons claiming by, through, or under it of all right, title, claim, or demand in and to the mortgaged premises or any part thereof, and out of the proceeds of such sale and the income that may have been received for the use, operation, and management of said road while in possession of such trustees, after deducting just allowance and expenses as in the preceding article mentioned, to pay, first, the interest and, second, the principal of said bonds ratably and with due regard to the successive maturity of different series of coupons, as far as said proceeds will go for that purpose, and in case any surplus should remain to pay the same over to the party of the first part. But in case it shall not be deemed proper or expedient in all or any of the States in which the mortgaged premises are found to seize, then it shall be the duty of said trustee to proceed in any proper tribunal to foreclose said mortgage according to the usual and established principles of law and equity;
but it is expressly understood and agreed between the par-
281 ties that in no case whatever shall the party of the first part
claim any right or advantage by reason of any valuation, appraisement, stay, or extension laws that now exist or may hereafter be enacted in any of the States in which said property exists or may be found, and said first-named party hereby releases to the second party all and every such right, claim, and demand, and hereby further agrees that it will neither apply for an injunction nor any stay of proceedings to arrest or prevent such sale from being made or possession being taken, as hereinbefore provided.

It is hereby expressly declared that this instrument is made and the trust herein created upon condition that if any sale shall be made under and by virtue of this mortgage, whether by judicial decree or foreclosure, or in execution of the trust so created, either by judicial decree or otherwise, the holders of a majority of the said

bonds then outstanding shall have the right to have said premises and all property herein embraced purchased for the use and benefit of all the holders of said then outstanding bonds. In case such sale shall be made by any person or officers other than the trustee herein named or its successors, then the holders of the majority of said bonds outstanding shall have the right, by notice in writing, to require said trustee or its successors to make such purchase on such terms as they in said notice shall prescribe; and in case said sale shall be made by said trustee, then the holders of a majority of said outstanding bonds shall have the right to appoint any other person whom they may choose to make such purchase on such terms as they may prescribe. If any person other than such trustee shall be so appointed such appointment and the terms of purchase shall be in writing, a copy of which writing shall be delivered to said trustees or their successors before such sale; and
282 if the holders of a majority of said outstanding bonds shall elect to have said purchase made as aforesaid and shall prescribe the terms on which they desire to make the same, then it shall be the duty of said trustee or its successors, or such other person as may be appointed as aforesaid, to make such purchase, if the same *as* can be made on the terms so prescribed, and having so purchased said premises and property the right and title thereto shall vest in the said trustee or the person so purchasing for the use aforesaid, and no bondholder shall have any claim to the said premises or property or the proceeds thereof except his *pro rata* share therein as represented by a new company or corporation to be formed for the use and benefit of the holders of all said bonds then outstanding; and said trustee or person making such purchase shall take such lawful measures as may be deemed for the best interests of all said bondholders to organize a new company or corporation, said company or corporation to be so organized upon such terms, conditions, and limitations and in such manner as the holders of a majority of said outstanding bonds shall in writing request or direct; and thereupon the said trustee or other person making such purchase shall convey said premises and property to the new company or corporation; and it is hereby declared that all persons who shall claim any interest, benefit, or advantage by virtue of this instrument or the trust hereby created shall take the same subject to all the terms herein contained and subject to all the rights and powers conferred by this instrument on the holders of a majority of the bonds hereby secured.

It is hereby agreed and understood that, for better assurance to the party of the second part and to the holders of the bonds secured by this instrument, the party of the first part agrees that it will, on demand, at any and all times hereafter make, execute, and deliver all such other and further conveyances and assurances for
283 the better assuring unto said trustee and its successors in the trust hereby created the said railroad, with its appurtenances, equipment, and property hereinbefore described or intended so to be, and all other property belonging to said party of the first part, now owned or hereafter to be acquired, as above provided and set

forth, or any and all the franchises now held or hereafter to be acquired by the party of the first part as said trustee or its successors by their counsel shall reasonably advise, devise, or require.

Whenever it shall happen from changes required to be made in said railroad and appurtenances that any parcel or property, whether real or personal, has become unnecessary or useless to the said railroad company for its business by reason of change of line or depot or other reasons or when any of the personal property shall have become worn out or inefficient and unnecessary to the operation of said railroad, then and in such case it shall be lawful for the directors of said railway company to make sales, exchanges, or other disposition of such parcels of real or personal property as they may deem for the best interest of said railroad company, and upon the sale or exchange of such property for any other and when any other property shall be acquired in the place of such property the same shall be held subject to the lien of this mortgage as if it was the property of the said company at the date hereof, and the parcels of property so held and disposed of by said directors shall be exempt from the lien hereby created. It is further agreed that said trustee shall not be required to take any action under this deed in the event of default until the party asking such action shall have indemnified such trustee for expenditure necessarily involved. All bonds that shall be received by said trustee in the course of said exchange shall be retained by said trustee for the protection of the persons who shall hold or own the bonds hereby secured in the event of
284 any holder or holders of the said Missouri, Iowa and Nebraska Railway Company bonds refusing to exchange and claiming priority over those who shall make such exchange, and the bonds so received in exchange shall, for the purpose of preserving the rights and security of the holders of the bonds given in exchange for them and to prevent their use for any other purpose, be endorsed as follows:

"This bond has been deposited with the Mercantile Trust Company, trustee, under the provisions of a certain deed of trust or mortgage made by the Missouri, Iowa and Nebraska Railway Company, dated March 1st, 1881, conveying to said The Mercantile Trust Company, as trustee, the railroad of the Missouri, Iowa and Nebraska Railway Company. It is not assignable for any purpose, but is to be used only in foreclosure, if need be, in pursuance of said trust."

It is, however, expressly understood and agreed that the said trustee shall not be charged with the duty of exchanging the said bonds, but it shall be the duty of said trustee to authenticate the said bonds and deliver them over to the party of the first part for the purpose of such exchange; and the party of the first part hereby agrees to effect and carry out the exchange of bonds hereinbefore contemplated and provided for and to deliver over to the said trustee the bonds of the first party which it shall receive in exchange for the bonds of the Wabash, St. Louis and Pacific Railway Company to be delivered to it by said trustee as aforesaid.

The said trustee shall receive reasonable compensation for every

act done by it as such trustee under this indenture, and the said trustee shall not be required to take any step in the execution of this trust likely to subject it to liability or expense unless the holder of the bonds secured hereby or some of them shall give sufficient security to indemnify the trustee from any such liability or expense, and the said trustee shall be at liberty to appoint counsel learned in the law in all suitable cases, whose reasonable fee shall be a proper charge upon the trust estate; and it is hereby further provided that the trustee shall not be liable for any act, default, or neglect of any agent by it appointed when such agent shall have been selected with reasonable discretion, and shall only be required to exercise good faith and ordinary prudence and diligence in the performance of its duties under this indenture.

In witness whereof the said Missouri, Iowa and Nebraska Railway Company, in pursuance of the resolutions aforesaid, has caused these presents to be executed and signed by its president and attested by its secretary and has caused its corporate seal to be hereto affixed the day and year aforesaid, and said The Mercantile Trust Company has also executed the same to evidence there acceptance of the trust hereby created the day and year aforesaid.

THE MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY,

[SEAL.] By A. L. HOPKINS, *President.*

Attest: THEO. P. SHOUTS, *Secretary.*

THE MERCANTILE TRUST COMPANY, *Trustee,*

[SEAL.] By LEWIS FITZGERALD, *President.*

Attest: H. C. DEWEY, *Secretary.*

STATE OF NEW YORK, *County of New York,* } *ss:*

Be it remembered that on this 29th day of March, 1881, personally came before me, the undersigned, a notary public within and for the county aforesaid, A. L. Hopkins, who, being by me duly sworn, did despose and say that he is the president of the Missouri, Iowa and Nebraska Railway Company, grantor in the foregoing instrument; that the name of said company is signed to said instrument by him as president of said company by virtue of the order of the board of directors; that the seal of the company attached thereto is the proper and genuine seal of said company and is affixed thereto by order of said board of directors; and the said A. L. Hopkins, as president, acknowledged the foregoing instrument to be the act and deed of the Missouri, Iowa and Nebraska Railway Company for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my notarial seal of office this 29th day of March, 1881,

WM. J. HARDING, *Notary Public.*

STATE OF IOWA, } ss.
County of Appanoose, }

Be it remembered that on this 8th day of April, 1881, personally came before me, the undersigned, a notary public within and for the county aforesaid, Theo. P. Shouts, who, being by me duly sworn, did depose and say that he is the secretary of the Missouri, Iowa and Nebraska Railway Company, grantor in the foregoing instrument; that he countersigned the said instrument and affixed the seal of said company thereto by order of the board of directors thereof.

In witness whereof I have hereunto set my hand and affixed my notarial seal of office this 8th day of April, 1881.

[SEAL.] W. L. SELBY,
Notary Public.

287 Said Exhibit D, above referred to, is in words and figures following, to wit:

EXHIBIT "D."

In the Circuit Court of the United States within and for the Southern District of Iowa, Eastern Division, at Keokuk.

THE FARMERS' LOAN AND TRUST COMPANY, Complainant,
vs.
THE MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY and Others, Defendants. } In Equity.

The supplemental bill of The Farmers' Loan and Trust Company, complainant in the original bill, filed herein.

To the judges of the said circuit court:

The Farmers' Loan and Trust Company, the complainant in the original bill, brings this its supplemental bill against The Missouri, Iowa and Nebraska Railway Company, the original defendant herein; The Wabash, St. Louis and Pacific Railway Company, a corporation created, organized, and existing under the laws of the States of Missouri, Illinois, Indiana, and Ohio; The Humeston and Shenandoah Railroad Company, a corporation created, organized, and existing under the laws of the State of Iowa; The Mercantile Trust Company, a corporation created, organized, and existing under the laws of the State of New York, and against all other parties to this suit; and thereupon your orator complains and says:

1. Heretofore, to wit, on the 30th of December, A. D. 1879, your orator filed its bill of complaint in equity in this suit in the circuit court of the United States within and for the district of Iowa
288 against the defendant The Missouri, Iowa and Nebraska Railway Company, to foreclose a certain mortgage or deed of trust made by the said defendant, The Missouri, Iowa and Nebraska Railway Company, to your orator, as trustee, on the first day of

June, A. D. 1870, to secure the payment of six thousand bonds of and for the sum of one thousand (1,000) dollars each, of which said bonds three thousand and twenty-five (3,025) were afterwards actually issued, as set forth in the said original bill; and your orator in and by the said bill also, among other things, prayed for the appointment of a receiver of the property of the said defendant; all of which will more fully and at large appear in and by the said bill or the record thereof, ready to be procuced and proved as this honorable court may direct.

2. Thereupon such proceedings were duly had before the said court in the said cause that the said defendant, The Missouri, Iowa and Nebraska Railway Company, was duly subpœnaed to appear and answer to the said bill of complaint, and that afterwards and in pursuance thereof the said defendant did appear and answer to the said bill of complaint, and that thereafter and before the final decree in said cause numerous other persons became parties to this suit and appeared and answered and filed other pleadings therein; and afterwards such proceedings were had before said court in the said cause that issues were made by and between the parties, evidence taken thereupon, and the said cause, after argument of counsel, submitted to the said court for its determination; and afterwards, to wit, on the 22d day of October, A. D. 1880, upon the consideration of the evidence and arguments of the counsel, the said court duly made and entered of record a decree in the said cause, in conformity with the prayer of the bill aforesaid, among other
289 things foreclosing the said mortgage and ordering a sale of the mortgaged property, as in and by the record thereof, ready to be produced and proved as this honorable court may direct, will more fully and at large appear, reference being had thereto; which said decree still remains in full force and effect, not reversed, satisfied, or otherwise vacated, and your orator hath not obtained any execution or satisfaction of or upon the said decree so recovered as aforesaid.

3. And afterwards, to wit, on the 22d of October, A. D. 1880, a second decree was made and entered by the court in this cause, by consent of all parties, appointing James Fitz Henry receiver to receive certain monies from the Wabash, St. Louis and Pacific Railway Company and to apply the same in payment of certain claims in said decree specified, and the court in and by the said decree expressly reserved the right and power to appoint a receiver of the property of the said Missouri, Iowa and Nebraska Railway Company at the instance of any party interested therein, as in and by the record of the said decree, ready to be produced and proved as this honorable court may direct, reference being had thereto, will more fully and at large appear.

4. And thereupon the said receiver duly qualified and entered upon the discharge of the duties of his said trust; and a division of said district of Iowa having been made by act of Congress, the said cause was, by the consent of all parties, transferred to the division of said court, whereof the terms were held at the city of Keokuk, and the litigation in this suit has been at all times from the 22d day of

October, A. D. 1880, down to appointment of Thomas Thacher as receiver herein, as hereinafter stated, active and continuous.

5. Heretofore, to wit, on the 12th day of February, A. D. 1880, pending the foreclosure proceedings herein and without the
290 knowledge or consent of your orator, the said Missouri, Iowa and Nebraska Railway Company and the said Wabash, St. Louis and Pacific Railway Company and a committee of the holders of the majority of the bonds issued under the said mortgage of June 1st, A. D. 1870, made and entered into a contract in writing, whereby, among other things, it was agreed that the said Missouri, Iowa and Nebraska Railway Company should lease its road and other property to the said Wabash, St. Louis and Pacific Railway Company, and that the said Missouri, Iowa and Nebraska Railway Company, as a primary and essential condition of the said contract, would cause all the bondholders holding bonds issued under and secured by the said mortgage of June 1st, A. D. 1870, to surrender their bonds and take in exchange therefor new bonds to be made by said Wabash, St. Louis and Pacific Railway Company and to be secured by a new mortgage to be made by the said Missouri, Iowa and Nebraska Railway Company upon its railway and other property, and that in the event of any holders of bonds under the said mortgage of June 1st, A. D. 1870, refusing to sanction said agreement, rendering a foreclosure necessary, the bondholders' committee of the said majority would bid at the foreclosure sale; all of which will more fully and at large appear by reference to a copy of said contract hereto attached, marked Exhibit "A," and made a part hereof as fully as if copied at large herein, the original of which your orator is ready to produce and prove as this honorable court may direct. The said Missouri, Iowa and Nebraska Railway Company never did cause all the holders of its bonds issued under and secured by the mortgage or deed of trust made by it to your orator June 1st, 1870, as aforesaid, to agree to surrender their bonds and to take in exchange therefor bonds to be made by the Wabash, St. Louis
291 and Pacific Railway Company as aforesaid, nor did it ever cause all the holders of its said bonds actually to surrender the same and take in exchange therefor bonds to be made by the Wabash, St. Louis and Pacific Railway Company as aforesaid, and its said agreement so to do was broken and never fulfilled by it.

6. And afterwards, to wit, on the 3d day of September, A. D. 1880, a certain indenture of lease, a copy of which is hereto annexed, marked Exhibit "B," to which reference is hereby made as a part of this bill, and the original of which your orator is ready to produce and prove as this honorable court may direct, was made and entered into by and between the said Missouri, Iowa and Nebraska Railway Company and the said Wabash, St. Louis and Pacific Railway Company, whereby, among other things, in pursuance of the said contract of the 12th day of February, A. D. 1880, the said Missouri, Iowa and Nebraska Railway Company leased its road and property to the said Wabash, St. Louis and Pacific Railway Company for the term of ninety-nine years, renewable forever, for a rental of thirty (30) per cent. of the gross earnings of said road

and property, to be applied and paid by said lessee, first, to the payment of all lawful taxes and assessments levied on said property; second, to the payment of the interest on the mortgaged bonds of the said lessor under its said mortgage, dated June 1st, 1870, and the supplementary indenture of March 1st, 1875; and, third, to the said lessor, on the first days of April and October in each year, the residue of said thirty (30) per cent. accruing from the earnings of the said property.

7. And thereupon the said Wabash, St. Louis and Pacific Railway Company entered into the possession of the road and property of the said Missouri, Iowa and Nebraska Railway Company, in pursuance of the terms and provisions of the said lease, and
292 remained in the possession thereof under and by virtue of the said lease until the dates hereinafter stated.

8. And afterwards, to wit, on the 1st day of March, A. D. 1881, a certain indenture was made and entered into by and between the said Missouri, Iowa and Nebraska Railway Company and the said Mercantile Trust Company, as trustee, a copy of which is hereto annexed, marked Exhibit "C," and to which reference is hereby prayed as a part of this bill, the original of which your orator is ready to produce and prove as this honorable court may direct; whereby in pursuance of the said contract of the 12th day of February, A. D. 1880, and of the said lease of the 3d day of September, A. D. 1880, the said Missouri, Iowa and Nebraska Railway Company mortgaged its road and property aforesaid to the said Mercantile Trust Company, trustee, to secure the payment of two thousand two hundred and sixty-nine (2,269) bonds of one thousand (1,000) dollars each, made by the said Wabash, St. Louis and Pacific Railway Company under and in pursuance of the said contract of the 12th day of February, A. D. 1880, and of the said lease of September 3d, A. D. 1880, with interest thereon at the rate of six (6) per centum per annum, payable semi-annually on the first days of March and September in each year, which said bonds were made for the purpose of being exchanged for the former bonds made by the said Missouri, Iowa and Nebraska Railway Company and secured by the said mortgage of the 1st day of June, A. D. 1870, and in the said indenture of mortgage it was provided as follows, to wit: "All bonds that shall be received by said trustee in the course of said exchange shall be retained by said trustee for the protection of the persons who shall hold or own the bonds hereby secured in the event of any holder or holders of the said Missouri, Iowa
293 and Nebraska Railway Company bonds refusing to exchange or claiming priority over those who shall make such exchange, and the bonds so received in exchange shall, for the purpose of preserving the rights and security of the holders of the bonds given in exchange for them and to prevent their use for any other purpose, be endorsed as follows: 'This bond has been deposited with the Mercantile Trust Company, trustee, under the provisions of a certain deed of trust or mortgage made by the Missouri, Iowa and Nebraska Railway Company, dated March 1st, 1881, conveying to the Mercantile Trust Company, as trustee, the railroad of

the Missouri, Iowa and Nebraska Railway Company. It is not assignable for any purpose, but is to be used only in foreclosure, if need be, in pursuance of said trust.'"

9. And afterwards, to wit, on the 28th day of March, A. D. 1882, a certain indenture was made and entered into by and between the said Missouri, Iowa and Nebraska Railway Company and said Wabash, St. Louis and Pacific Railway Company and the said Humeston and Shenandoah Railroad Company, a copy of which is hereto annexed, marked Exhibit "D," and to which reference is hereby prayed as a part of this bill, the original of which, as your orator is informed and believes, is in the possession of the said Humeston and Shenandoah Railroad Company, whereby, among other things, the said Missouri, Iowa and Nebraska Railway Company, for certain considerations therein stated and the sum of one hundred and seventy-one thousand and nineteen dollars and six cents ($171,019.06), to be paid by the Humeston and Shenandoah Railroad Company, conveyed to the said Humeston and Shenandoah Railroad Company all that portion of the railroad of the said Missouri, Iowa and Nebraska Railway Company extending from Humeston, in the county of Wayne, in the State of Iowa, to Van Wert, sometimes called Prairieville, in the county of Decatur, in the State of
294 Iowa, being in the aggregate about seventeen and eight one-hundredths (17.08) miles in length, together with all and singular the road-bed, right of way, tracks, side tracks, turnouts, stations, depots, and depot grounds, shops, engine-houses, coal-houses, fuel-houses, and all lands, structures, and appurtenances intended for the use of the railway as described, and all embankments, fences, culverts, bridges, freight-houses, and other structures intended for the use of said road, which seventeen and eight one-hundredths (17.08) miles of railway and other property were a part of the road and property aforesaid of the said Missouri, Iowa and Nebraska Railway Company included in and conveyed by the said mortgage of the 1st day of June, A. D. 1870, and the said lease of the 3d day of September, A. D. 1880, and the said mortgage of the 1st day of March, A. D. 1881; and the said Wabash, St. Louis and Pacific Railway Company, for certain considerations in and by said indenture, joined with the said Missouri, Iowa and Nebraska Railway Company in conveying the said railroad and property to the said Humeston and Shenandoah Railroad Company, and the said conveyance was, by the terms thereof, expressly made subject to the said mortgage of the 1st day of March, A. D. 1881, to the said Mercantile Trust Company, and the same was expressly excepted from the warranty accompanying the said conveyance, and the said Humeston and Shenandoah Railroad Company, in and by the said indenture, for itself, successors, and assigns, covenanted and agreed to and with the said Missouri, Iowa and Nebraska Railway Company and the said Wabash, St. Louis and Pacific Railway Company that it would pay and would bind itself, by good and sufficient bond under its corporate seal, to be executed and delivered simultaneously with the said indenture, to pay, on the first day of March, A. D. 1881,
295 to the said Missouri, Iowa and Nebraska Railway Company,

its successors or assigns, the sum of one hundred and seventy-one thousand and nineteen dollars and six cents ($171,019.06), with the interest thereon at the rate of five (5) per cent. per annum, payable semi-annually, in United States gold coin, which said interest payments shall, so long as the mortgage aforesaid shall be a lien on the property thereby conveyed, be made to the Mercantile Trust Company, to be applied in payment of the interest and principal of said bonds as the same shall from time to time fall due; but it was agreed and understood in and by the said indenture that the aforesaid covenant and promise of the said Humeston and Shenandoah Railroad Company to pay the said consideration price, to wit, one hundred and seventy-one thousand and nineteen dollars and six cents ($171,019.06), was upon the express condition that the title to the said property conveyed as aforesaid should be free and clear from all incumbrances created or suffered thereon by either the said Missouri, Iowa and Nebraska Railway Company or the said Wabash, St. Louis and Pacific Railway Company, and particularly from the incumbrance of said mortgage to the Mercantile Trust Company of date March 1st, A. D. 1881, and the agreement to pay the said semi-annual installments — interest was upon the express condition that the Humeston and Shenandoah Railroad Company should have and retain the quiet and peaceful possession of the property and premises conveyed as aforesaid and every part thereof, and in the event of a failure of the title of the said Missouri, Iowa and Nebraska Railway Company and of the said Wabash, St. Louis and Pacific Railway Company, or in case of the disturbance of the possession of said Humeston and Shenandoah Railroad Company by reason of foreclosure of said mortgage or
296 of the appointment of a receiver or from any other cause whatsoever, then the obligation of said Humeston and Shenandoah Railroad Company to pay said sum of one hundred and seventy-one thousand and nineteen dollars and six cents ($171,019.06) as aforesaid or the semi-annual installments of interest should immediately cease and determine, and said provisions and conditions were also inserted in the bond made by said Humeston and Shenandoah Railroad Company, as hereafter stated.

10. And at the same time as the execution and delivery of the said indenture last above stated the said Humeston and Shenandoah Railroad Company made, executed, and delivered to the said Missouri, Iowa and Nebraska Railway Company its promissory bond, under its corporate seal, whereby it promised and bound itself to pay on the 1st day of March, A. D. 1921, to the said Missouri, Iowa and Nebraska Railway Company, its successors or assigns, the said sum of one hundred and seventy-one thousand and nineteen dollars and six cents ($171,019.06), with interest thereon at the rate of five (5) per cent. per annum, payable semi-annually, in United States gold coin; which said interest payments it promised, so long as the mortgage aforesaid of the first day of March, A. D. 1881, should be a lien on the property so conveyed to it as aforesaid, to pay to the said Mercantile Trust Company, to be applied to the payment of the interest and principal of the said bonds of the Wabash, St. Louis and

Pacific Railway Company dated on the 1st day of March, A. D. 1881, as aforesaid, which bond was subject to the same condition as those stated in the last paragraph.

11. And thereupon, under and in pursuance of the terms of the said indenture of conveyance of the 28th day of March, A. D. 1882, the said Humeston and Shenandoah Railroad Company took and entered into the possession of the said seventeen and eight
297 one-hundredths (17.08) miles of railway and other property mentioned in the said indenture of conveyance and have continuously ever since held and retained possession thereof, and the said Humeston and Shenandoah Railroad Company at the time of making and entering into the said indenture of the 28th day of March, A. D. 1882, and at the time of the execution and delivery of its bond aforesaid of date March 28th, 1882, and at the time of taking possession of said railway and other property knew and had notice of the said mortgage of date the first day of June, A. D. 1870, and of the default of the said Missouri, Iowa and Nebraska Railway Company in the payment of the interest of the bonds secured by said mortgage, and of the insolvency of the said Missouri, Iowa and Nebraska Railway Company, and of the bill filed in this cause by your orator, and of all subsequent proceedings in this cause, including the decree of foreclosure of said mortgage and order of sale of said railway and property made and entered on the 22d day of October, A. D. 1880; and took the said property with full knowledge of all said facts and subject to the said mortgage and decree in the same manner as the said Missouri, Iowa and Nebraska Railway Company, its grantor, the defendant herein, had held the same prior to the conveyance to the said Humeston and Shenandoah Railroad Company.

12. Default has been made by the said Humeston and Shenandoah Railroad Company in the payment of the semi-annual interest due on its bond of date March 28th, A. D. 1882, to the said Missouri, Iowa and Nebraska Railway Company, and the same remains overdue and unpaid. The installment of interest on the said bond which fell due in September, A. D. 1884, remains in default, overdue, and unpaid, and the same is true as to each installment of interest which has fallen due on said bond on every March
298 and September since the last-mentioned date, and your orator is informed and believes that the said railway company has wholly neglected and refused to make any provision for the payment of the said interest incurred through the terms of said bond.

13. The said Humeston and Shenandoah Railroad Company is wholly insolvent and has no property or assets, as your orator is informed and believes, except its railway and the property connected therewith. Its said railway and property is encumbered by a mortgage dated March 31st, 1881, to the extent of thirty thousand dollars ($30,000) per mile, bearing interest at the rate of seven per cent. (7%) per annum, payable semi-annually, said sum being greatly in excess of the value thereof, all the interest of which accruing after March 31st, 1881, as your orator is informed and believes, is in default, and the same remains overdue and unpaid, and the said

Humeston and Shenandoah Railroad Company is unable to pay its debts and obligations, and, as your orator is informed and believes, there are taxes on the said property and premises conveyed as aforesaid by the said Missouri, Iowa and Nebraska Railway Company and the said Wabash, St. Louis and Pacific Railway Company to the said Humeston and Shenandoah Railroad Company due and unpaid amounting to a large sum, and the said railway and property are in danger of becoming incumbered with charges, some of which may be superior and paramount to the lien of the said mortgage to your orator of date the 1st day of June, A. D. 1870, and entitled to be paid in preference to the bonds and interest coupons secured by the same; and the said Humeston and Shenandoah Railroad Company is also largely indebted to sundry and various persons. The rights and interests of your orator as trustee as aforesaid and of the holders of the bonds secured by the aforesaid deed of
299 trust or mortgage will be greatly prejudiced, infringed, and impaired if the said Humeston and Shenandoah Railroad Company is permitted to retain the control and management of the said railroad and of the property conveyed by and described in the said deed of trust or mortgage. The property and premises so conveyed to the said Humeston and Shenandoah Railroad Company as aforesaid are and constitute very inadequate security for the payment of the amounts due the said bondholders and are and constitute very inadequate security for the payment of the amounts of principal and interest due on the said bond of the said Humeston and Shenandoah Railroad Company of date the 28th day of March, A. D. 1882, and the entire property and premises conveyed by and described in the said deed of trust or mortgage to your orator of date the 1st day of June, A. D. 1870, are and constitute very inadequate security for the payments of the amounts due the said bondholders, and are so situated that they cannot, nor can any part thereof, be sold in parcels, as they constitute one continuous line of railroad, which can only be worked and operated advantageously as such.

14. Your orator is informed and believes and therefore alleges that the said Wabash, St. Louis and Pacific Railway Company became insolvent on or about May 28, 1884, and at that time its debts were largely in excess of the entire value of all its property, and it then ceased to pay its current obligations as the same fell due, and on that day the said Wabash, St. Louis and Pacific Railway Company filed its bill in equity in the circuit court of the United States within and for the eastern district of Missouri against the Central Trust Company, a corporation (which held a mortgage on all its property for sums greatly in excess of the value thereof), your orator,
the said Mercantile Trust Company, the said Missouri, Iowa
300 and Nebraska Railway Company, the said Humeston and Shenandoah railroad, and many others, alleging, among other things, its insolvent condition, and praying, among other things, the appointment of receivers to prevent its property from being wasted and sacrificed. All the defendants herein named were duly served with process and appeared in the suit; and afterwards, to

wit, on May 28th, 1884, Solon Humphreys and Thomas E. Tutt were duly appointed by said court receivers of all the property of the said Wabash, St. Louis and Pacific Railway Company. Afterwards the said Central Trust Company filed its bill in equity against the said Wabash, St. Louis and Pacific Railway Company and others for the foreclosure of its said mortgage in the circuit court of the State of Missouri within and for the city and county of St. Louis, and in the said suit the defendants appeared, and thereupon the same was removed to the said circuit court of the United States within and for the eastern district of Missouri, and was thereafter duly consolidated with the suit brought by the Wabash, St. Louis and Pacific Railway Company as aforesaid, and the said receivers took possession of the said Missouri, Iowa and Nebraska railway and remained in possession and continued to operate the same until the appointment of Thomas Thacher as receiver by this court in this foreclosure cause, as hereinafter stated.

The said Wabash, St. Louis and Pacific Railway Company paid the coupon interest on its mortgage bonds up to and including the coupons which fell due March 1st, A. D. 1884, but no interest has been paid by it since that date. Default has been made by the said Wabash, St. Louis and Pacific Railway Company in the payment of the rental provided for in the said indenture of lease made the 3rd day of September, A. D. 1880, as aforesaid, and in payment of
301 the lawful taxes and assessments levied on the said property, and in payment of the interest on the mortgage bonds of the said Missouri, Iowa and Nebraska Railway Company under its deed of trust or mortgage aforesaid dated June 1st, A. D. 1870, and the supplementary indenture of March 1st, A. D. 1875, and its payment to the said Missouri, Iowa and Nebraska Railway Company of the thirty per cent. (30 per cent.) of the gross earnings of the said Missouri, Iowa and Nebraska railway and property. The installment of rent and interest which fell due on the 1st day of April, A. D. 1884, remains in default, overdue, and unpaid, and the same is true as to each installment of interest, taxes, and rental which has fallen due since the last-mentioned date, and the said receivers of the said Wabash, St. Louis and Pacific railway property have utterly and wholly failed to pay any part of the said taxes, interest, or rental, and, in view of being so unable and unwilling to pay installments of taxes, interest, and rental provided for by said lease, the said receivers were, by the court which had appointed them, directed to abandon the rights of the said Wabash, St. Louis and Pacific Railway Company under the said indenture of lease dated September 3, A. D. 1880, and the possession of the property described therein, and to turn the property over to Thomas Thacher, the receiver appointed as hereinafter stated.

15. And in the said consolidated cause of The Central Trust Company of New York and others, complainants, against The Wabash, St. Louis and Pacific Railway Company and others, defendants, pending as aforesaid in circuit court of the United States for the eastern district of Missouri, your orator, as defendant therein, filed its petition therein February 2nd, A. D. 1885, alleging certain of

the facts heretofore in this supplemental bill stated, and pray-
302 ing that the said court would make such orders as might be necessary and proper to enable it to execute the decree of this court of October 22nd, 1880; and afterwards, to wit, on the 9th day of June, A. D. 1885, *and* the said court ordered, adjudged, and decreed that Thomas Thacher, of the city — New York, be appointed receiver of all and singular the property and franchises of the said Missouri, Iowa and Nebraska Railway Company, including the line of railroad of said company extending from Keokuk, in the State — Iowa, to Van Wert, in the said State, together with all and singular the appurtenances in anywise thereunto appertaining, and further ordered, adjudged, and decreed that the defendant The Wabash, St. Louis and Pacific Railway Company and the receivers thereof appointed in said cause deliver up and render to the said Thomas Thacher as such receiver all and singular the property and premises above described on or before the 1st day of July, A. D. 1885.

16. A majority of the holders of the bonds of the said Missouri, Iowa and Nebraska Railway Company secured by the mortgage to your orator of date the 1st day of June, A. D. 1870, consented to the arrangement embodied in the agreement aforesaid of Feb. 12th, A. D. 1880, and in the lease aforesaid of date the 3rd day of September, A. D. 1880, and in the mortgage to the Mercantile Trust Company aforesaid of date the 1st day of March, A. D. 1881, and received, as your orator is informed and believes, new bonds made, executed, and delivered to them by the said Wabash, St. Louis and Pacific Railway Company in pursuance of the said arrangement, but the bonds themselves, having been deposited with your orator long before, remained so deposited, nor have they ever been stamped as in the mortgage to the Mercantile Trust Company *as* provided, your orator's receipts for said bonds having been used instead
303 of the bonds themselves for the purposes of exchange, as your orator is informed and believes. Your orator is informed and believes and therefore alleges that the holders of seventeen (17) of the old Missouri, Iowa and Nebraska bonds or thereabouts for one thousand dollars ($1,000) each never assented to the new arrangement or received or consented to receive the new bonds of the said Wabash, St. Louis and Pacific Railway Company in exchange for their old securites, but refused so to do. Your orator was no party to any of the said agreements between said bondholders and the Wabash, St. Louis and Pacific Railway Company and the said Mercantile Trust Company, trustee, and each and every of the said agreements was made without the knowledge, consent, or concurrence of your orator.

17. Your orator is informed and believes and therefore alleges that one O. C. Du Souchet is the owner of fourteen (14) of the seventeen (17) old bonds of the said Missouri, Iowa and Nebraska Railway Company whose owners did not assent to the arrangement for an exchange as aforesaid. Said O. C. Du Souchet, on June 29th, A. D. 1885, filed his intervening petition herein, wherein he averred that he was the owner of the said fourteen (14) bonds; that all of the other bonds and coupons secured by said mortgage of June 1st, A.

D. 1870, and by the decree of foreclosure of October the 22nd, A. D. 1880, except his own bonds and coupons and three other bonds and the coupons attached thereto and certain coupons belonging to William Hill and the Chase National bank, had been paid off and discharged, and prayed for the appointment of a receiver of all and singular of said mortgaged property to care for and preserve the same, with such other powers as — the court may seem fit, and further prayed the court to carry into execution the decree of this court of date October 22nd, A. D. 1880, and the subsequent
304 decrees and orders made and entered by the court, and your orator prays to refer to said petition as a part hereof, and the said O. C. Du Souchet, in and by said petition, intended to claim and did claim that the bonds and coupons exchanged as aforesaid by a majority of the bondholders under the said mortgage to your orator of date June 1st, A. D. 1870, for the new bonds of the said Wabash, St. Louis and Pacific Railway Company had the effect to pay off, cancel, and discharge the said bonds and coupons so exchanged as aforesaid, and the said O. C. Du Souchet, in and by his said petition, intended to and did refuse to exchange his said bonds and intended to and did claim priority over those who had made such exchange.

18. Your orator is informed and believes and therefore alleges that it was not the intention of that part of the holders of the bonds of the said Missouri, Iowa and Nebraska Railway Company aforesaid or any of them or of the committee acting for them who made this arrangement that the old bonds of said Missouri, Iowa and Nebraska Railway Company secured by mortgage of June 1st, A. D. 1870, should in any case be cancelled or said decree herein of October 22d, A. D. 1880, vacated or annulled or the right to execute the same be in any way abrogated or impaired; but your orator avers that, on the contrary, it was the design and intention that the old bonds of the Missouri, Iowa and Nebraska Railway Company aforesaid having been exchanged should remain in the hands of the Mercantile Trust Company to be used, as stated, in said mortgage for foreclosure, if need be, in pursuance of the trust; and your orator is further advised and therefore alleges that, as the holders of said seventeen (17) bonds have not assented and do not assent to the exchange, but refuse so to do, and especially as the holder of fourteen (14)
305 of them has absolutely in this very cause, in and by the aforesaid petition, claimed a priority over the holders of the *holders of the* other bonds of the Missouri, Iowa and Nebraska Railway Company aforesaid, it is its duty to proceed under the decree herein rendered and *sold* the mortgaged property for the benefit of the bondholders. It is further advised and therefore alleges that the technical owner of the said Missouri, Iowa and Nebraska Railway Company bonds which have been exchanged, being all except seventeen (17), is the Mercantile Trust Company, as trustee under the mortgage of date March 1st, A. D. 1881, hereinabove set forth.

19. And afterwards, to wit, on the 30th day of June, A. D. 1885, your orator filed herein his petition praying that Thomas Thacher be appointed receiver herein of all and singular the property and

franchises of the defendant company, Missouri, Iowa and Nebraska Railway Company; and afterwards, to wit, on the 2d day of July, A. D. 1885, the said petitions came on to be heard and the court, on consideration thereof, ordered, adjudged, and decreed that the said Thomas Thacher be appointed receiver in this cause of all and singular the property and franchises of the defendant The Missouri, Iowa and Nebraska Railway Company, including the entire railway and property from Keokuk to Van Wert, and ordering him to receive and take immediate possession of the same from Messrs. Humphreys and Tutt, the receivers then and theretofore in possession thereof, and thereafter the said Thomas Thacher duly qualified as such receiver, and the said Humphreys and Tutt then delivered to him as such receiver the possession of said railway, with the exception of seventeen and eight one-hundredths (17.08) miles from Humeston west which was in the possession of said Humeston and Shenandoah Railroad Company; and thereupon said Thomas Thacher made demand upon said Humeston and Shenan-
306 doah Railroad Company to deliver to him as such receiver the said seventeen and eight one-hundredths (17.08) miles, but the said Humeston and Shenandoah Railroad Company refused so to do and have ever since retained and now hold the possession of seventeen and eight one-hundredths miles and operates the same in violation and contempt of the said orders of the court appointing Thomas Thacher such receiver; and your orator is informed and believes that the said Humeston and Shenandoah Railroad Company claims that the lease by the said Missouri, Iowa and Nebraska Railway Company to the said Wabash, St. Louis and Pacific Railway Company was with the knowledge and consent of your orator, which is untrue, and that said Humeston and Shenandoah Railroad Company further claims that your orator and the holders of the bonds secured by the said mortgage to the said Mercantile Trustee Company consented to a pretended sale of said *eighteen* and eight one hundredths (17.08) miles of said railway to the said Humeston and Shenandoah Railroad Company, which claim as to your orator, your orator says, is false of its own knowledge, and which claim as to said bondholders your orator alleges on information and belief to be false.

20. The said defendant, The Missouri, Iowa and Nebraska Railway Company, is wholly and utterly insolvent and has no property or assets, as your orator is informed and believes, except those conveyed by said deed of trust or mortgage, and is unable to pay its debts and obligations.

21. On the 4th day of January, A. D. 1885, your orator was requested by and on behalf of nearly all those interested in the said bonds to proceed to execute the said decree herein of October 22d, A. D. 1880, and to advertise the property for sale under the same. In view of the said request your orator forthwith requested the
307 master named in said decree to proceed to advertise under the same and to execute the said decree as therein provided, but the said master declined to proceed to execute the said decree and to carry out the said request of your orator, stating as a reason

therefor, among other things, that certain parties claim that your orator has no right to have the said decree executed. Thereupon your orator filed a petition in this cause praying for an order upon the master to execute the said decree, and as a result of the action of the court thereon your orator files this its supplemental bill, not hereby, however, in any way vacating or opening or amending the decree already had herein, nor relinquishing or waiving any rights or privileges which it has under said decree, or consenting that the same be done by the court or in any other way, and your orator charges that the said decree is in full force, and that each and every party hereto has and had at the time of the making and entering of said decree and ever since has had full and complete notice of the said decree and of all the pleadings and proceedings in this cause.

22. In consequence of the embarrassed condition of the financial affairs of the defendant, the said Missouri, Iowa and Nebraska Railway Company, and of the said Humeston and Shenandoah Railroad Company, and on account of the many difficulties and complications which are manifest upon and from the allegations hereinbefore contained and involved in the execution of your orator's said trust and arising since the former decree made and entered herein by this court on the 22d day of October, A. D. 1880, your orator is advised and believes that it cannot proceed without the further aid and interposition of this honorable court in chancery sitting, nor can the said trust be executed, as your orator is advised and
308 charges, and the rights of all parties interested be ascertained and fully protected in the premises otherwise than by judicial sale of the said railroad and all its equipments and appurtenances covered by said deed of trust or mortgage. Till such sale can be had and the proceeds thereof be distributed, your orator is likewise advised and charges that it is expedient and necessary that the seventeen and eight one-hundredths (17.08) of the said railway and the other property belonging thereto now in the hands of the defendant The Humeston and Shenandoah Railroad Company, with its equipment and all the rights, franchises, and property appurtenant thereto, of whatsoever name, nature, and description, be placed in the hands and under the control of the said Thomas Thacher, the receiver heretofore appointed herein for that purpose.

23. Your orator is informed and believes and therefore alleges that the said Thomas Thacher, as receiver, has incurred some indebtedness and issued some certificates therefor, under the direction of and with the consent of the court, which should be provided for in the sale of the mortgaged property.

To the end, therefore, that said defendants may, if they can, show why your orator should not have the relief hereby prayed and may appear and answer in the premises, and that as fully as though thereunto especially interrogated, but not under oath, and answer under oath by the defendants and each and every of them being hereby expressly waived, pursuant to the amendment to the XLI rule of practice for the courts of equity of the United States, and that your orator may have the full benefit of the said suit against all of the

defendants herein named, and may have the same relief against each and every of the defendants as your orator might or could have had against the defendant The Missouri, Iowa and Ne-
309 braska Railroad Company in case the matters subsequent to the said decree herein averred had not occurred, and that the former decree made herein may be promptly and immediately executed, and that your orator may have such other and further relief in the premises as to your honors shall seem meet—

May it please your honors to grant unto your orator the most gracious writ of subpœna of the United States of America, to be directed to the said Missouri, Iowa and Nebraska Railway Company, the said Wabash, St. Louis and Pacific Railway Company, and said Humeston and Shenandoah Railroad Company, and the said Mercantile Trust Company, thereby commanding them and every of them, at a certain day and under a certain pain to be therein specified, personally to be and appear before your honors and this honorable court, and then and there to answer all and singular the premises and to stand to, perform, and abide by such order and decree therein as to your honors shall seem meet; and your orator will ever pray.

THE FARMERS' LOAN AND TRUST COMPANY,
[SEAL.] By R. G. ROLSTON, *President.*

TURNER, LEE & McCLURE,
Complainant's Solicitors.
HERBERT B. TURNER, *Of Counsel.*

Said Exhibit E, above referred to, is in words and figures following, to wit:

(EXHIBIT "E.")

In the Circuit Court of the United States in and for the Southern District of Iowa, Eastern Division.

THE FARMERS' LOAN & TRUST COMPANY, Complainant,		
310 *vs.*		
THE MISSOURI, IOWA AND NEBRASKA RAILWAY Company, The Mercantile Trust Company, The Wabash, St. Louis & Pacific Railway Company, and The Humeston & Shenandoah Railroad Company, Defendants.		In Equity. Decree.

In this cause The Mercantile Trust Company and The Humeston and Shenandoah Railroad Company, defendants, having appeared to and answered the supplemental bill of complaint of the complainant, and the cause having been set down for hearing upon the said supplemental bill and the said answers, and the said Humeston and Shenandoah Railroad Company having filed its cross-bill

against the complainant, the Missouri, Iowa and Nebraska Railway Company and Thomas Thacher, receiver, and the defendants to said cross-bill having demurred thereto, and the defendants The Missouri, Iowa and Nebraska Railway Company and the Wabash, St. Louis and Pacific Railway Company having each entered its appearance to the said supplemental bill and each of them having failed to file its plea, demurrer, or answer to the said supplemental bill in the clerk's office on the rule day next succeeding that of entering its appearance, and thereupon, in default thereof, the complainant having entered an order in the order book that said supplemental bill be taken *pro confesso*, and more than thirty days having elapsed from and after the entry of said order, it is now ordered, adjudged, and decreed that the said supplemental bill be taken as true and confessed as against the said defendants, The Missouri, Iowa and Nebraska Railway Company and the Wabash, St. Louis and Pacific Railway Company, and each of them.

And now, on this day, this cause came on to be heard upon the said supplemental bill and the answers thereto aforesaid, and
311 upon the said demurrer to the said cross-bill, and the same were argued by counsel, and thereupon it was ordered, adjudged, and decreed as follows, to wit: That the said demurrer to the cross-bill be, and the same is hereby, overruled; and it is further ordered, adjudged, and decreed that the equities are with the complainant, and that the facts and circumstances set forth in the supplemental bill of complaint herein are, in substance, true; that the decree of foreclosure and sale made and entered herein on the 22nd day of October, A. D. 1880, is still in force and is not reversed, vacated, or in any manner satisfied, cancelled, or discharged; that on the 12th day of February, 1880, pending the foreclosure proceedings herein, the Missouri, Iowa and Nebraska Railway Company and the Wabash, St. Louis and Pacific Railway Company and the committee of the holders of the majority of the bonds of June 1st, 1870, secured by the mortgages made to the complainant, made and entered into a contract in writing, a copy of which is annexed to the supplemental bill herein.

That on the 3rd day of September, 1880, an indenture of lease was made and entered into by and between the said railway companies, copies of which are annexed to the supplemental bill of complaint herein, whereby the Missouri, Iowa and Nebraska Railway Company leased its road and property to the Wabash, St. Louis and Pacific Railway Company for ninety-nine years on certain terms and conditions.

That the Wabash, St. Louis and Pacific Railway Company entered into the possession of the road and property of the Missouri, Iowa and Nebraska Railway Company in pursuance of the terms and provisions of said lease.

That on March 1st, 1881, and indenture of mortgage was made between the Missouri, Iowa and Nebraska Railway Company
312 and the defendant The Mercantile Trust Company, trustee, a copy of which is annexed to the supplemental bill of complaint herein, to which the Missouri, Iowa and Nebraska railway

mortgaged its road and property to the Mercantile Trust Company to secure the payment of a series of bonds of the Wabash, St. Louis and Pacific Railway Company made under the contract of February 12th, 1880, and the lease of Sept. 3rd, 1880, which bonds were made for the purpose of being exchanged for the existing bonds of the Missouri, Iowa and Nebraska Railway Company secured by the mortgages to the complainant herein, and which mortgages to the Mercantile Trust Company provides, in substance, that all the bonds received by the Mercantile Trust Company as trustee thereunder in the course of such an exchange should be retained by such trustee for the protection of the persons who should hold or own the bonds thereby secured in the event of any holder or holders of the Missouri, Iowa and Nebraska Railway Company bonds refusing to exchange or claiming priority over those who should make such exchange, and that the bonds so received or exchanged should, for the purpose of preserving the rights and security of the holders of the bonds given in exchange for them, *to* be endorsed to the effect that they were deposited with the Mercantile Trust Company, trustee, under the provisions of said mortgage deed — were not assignable for any purpose, but were to be used only in foreclosure, if need be, in pursuance of the trust.

That on the 28th day of March, 1880, an indenture was made between the Missouri, Iowa and Nebraska Railway Company, the Wabash, St. Louis and Pacific Railway Company, and the Humeston and Shenandoah Railroad Company, a copy of which is annexed to the supplemental bill of complaint herein, whereby the
313 Missouri, Iowa and Nebraska Railway Company, for certain considerations therein stated, conveyed to the Humeston and Shenandoah Railroad Company that portion of the railroad of the Missouri, Iowa and Nebraska Railway Company extending from Humeston, in the county of Wayne, in the State of Iowa, to Van Wert, sometimes called Prairieville, in the county of Decatur, in the State of Iowa, being in the aggregate about $17\frac{8}{100}$ miles in length, with the appurtenances thereof, which property so conveyed was a part of the road and property of the Missouri, Iowa and Nebraska Railway Company included in and conveyed by the mortgages to the complainant herein.

That the Humeston and Shenandoah Railroad Company thereupon, in pursuance of said indenture, entered into the possession of the said property so conveyed to it as aforesaid, but that it had actual knowledge at the time of the existence of the mortgages made to the complainant herein, to foreclose which the original bill herein was filed, and of the existence of the decree of foreclosure and sale entered herein October 22nd, 1880.

That the holders and owners of three thousand and eight (3,008) bonds of the three thousand and twenty-five (3,025) bonds outstanding and existing under the mortgage of June 1st, 1870, made to the complainant herein and mentioned in the decree of October 22nd, 1880, exchanged the same under and in pursuance of the provisions of the agreements above stated for two thousand two hundred and

fifty-six (2,256) bonds of the Wabash, St. Louis & Pacific Railway Company of one thousand dollars ($1,000) each, secured by the mortgage so made to the Mercantile Trust Company as aforesaid, and for seven hundred and fifty-two thousand dollars ($752,000.00) of the preferred stock of the Wabash, St. Louis and Pacific Railway Company, but that the holders of seventeen (17) of said bonds of June 1st, 1870, did not exchange them for such bonds of the
314 Wabash, St. Louis and Pacific Railway Company, but still hold and own the same.

That the said three thousand and eight (3,008) bonds of June 1st, 1870, were, after such exchange, held by the Mercantile Trust Company as trustee for the holders of the two thousand two hundred and fifty-six (2,256) bonds of the Wabash, St. Louis and Pacific Railway Company and as collateral security for said two thousand two hundred and fifty-six (2,256) bonds.

That the holders and owners of seventeen (17) of the bonds of the Missouri, Iowa, and Nebraska Railway Company of June 1st, 1870, secured by the mortgages to the complainant herein, did not exchange their said bonds for bonds of the Wabash, St. Louis and Pacific Railway Company, but, on the contrary, refused and still continue to refuse to exchange the same and have claimed and still continue to claim priority over the holders of said bonds who have made such exchange.

That there is now due and unpaid upon each of the said Wabash, St. Louis and Pacific Railway Company's bonds the sum of one thousand one hundred and forty-nine dollars and ten cents ($1,149.10), and upon all of the said two thousand two hundred and fifty-six (2,256) Wabash, St. Louis and Pacific Railway Company's bonds in the aggregate the sum of two millions five hundred and ninety-two thousand three hundred and sixty-nine dollars and sixty cents ($2,592,369.60), with interest thereon at the rate of six per centum per annum from the date of this decree.

That there is now due and unpaid upon each of the said three thousand and twenty-five (3,025) Missouri, Iowa and Nebraska Railway Company's bonds of June 1st, 1870, the sum of two thousand two hundred and sixty-six dollars and seventeen cents ($2,266.17), with interest from the date of this decree on the principal sum at the rate of seven per cent. per annum, payable semi-
315 annually, and on the interest at the rate of six per centum per annum, and upon the said seventeen (17) Missouri, Iowa and Nebraska railway's bonds in the aggregate the sum of thirty-eight thousand five hundred and twenty-four dollars and ninety cents ($38,524.90), with interest as aforesaid.

That all the costs and expenses of this suit, the allowance for compensation, disbursements, and expenses of the complainant, and the allowances to counsel, so far as the same were ordered to be paid in the former decree herein of October 22nd, 1880, have been paid.

That the defendant The Missouri, Iowa and Nebraska Railway Company has wholly failed and neglected to pay the amount due upon the bonds and mortgages mentioned in the said decree, as re-

quired therein, and still continues to so neglect and refuse and has made default therein.

That the holders of the said seventeen (17) bonds and coupons thereto annexed are entitled to have the said decree of October 22nd, 1880, enforced for their benefit, as to the amount due on their bonds, to the same extent that the holders of the other three thousand and eight (3,008) bonds of June 1st, 1870, are entitled to have the same enforced, and that they have no priority over the holders of the said three thousand and eight (3,008) bonds of June 1st, 1870, but that the decree must be executed for the benefit of all parties interested in the said three thousand and twenty-five (3,025) bonds equally and *pro rata* as against each other.

Wherefore the court doth further order, adjudge, and decree that the said defendant The Missouri, Iowa and Nebraska Railway Company do, within five (5) days from and after the date of this decree, pay the amounts due on the bonds and coupons aforesaid,
316 together with the costs and expenses of this suit, to be taxed; that in default thereof the mortgaged premises described in the said decree of October 22nd, 1880, be sold at public auction at the front door of the building in which the United States courts are held, in the city of Keokuk, in the State of Iowa, by P. T. Lomax, Esq., master of this court, and that the compensation of such master shall hereafter be fixed by the court. The said master is hereby directed to give notice of the time and place of such sale by advertising the same in the Daily Gate City, a newspaper published at Keokuk, in the State of Iowa, and in the Commercial and Financial Chronicle, a newspaper published in the city of New York, in the State of New York, once a week for four successive weeks—the last one of such insertions shall be at least ten (10) and not more than 20 days before such day of sale—which notice shall contain a brief description of the property to be sold; that the mortgaged property be sold absolutely and not subject to statutory redemption, but the same shall be sold in two pieces, the first of said parcels which shall be so sold to include all the mortgaged property except the seventeen and eight one-hundredths ($17\frac{8}{100}$) miles of said railway, extending from Humeston, in the State of Iowa, to Van Wert, in the State of Iowa, and the second of said parcels to include said seventeen and eight one-hundredths ($17\frac{8}{100}$) miles of said railway, which said second parcel shall be sold in case there be not realized from the sale of the first parcel enough to pay all moneys found due, as above stated, and that any party to this suit or any of the bondholders whom such party may represent may bid for and purchase the said property or either parcel thereof; that the said master shall adjourn and postpone the said sale from time to time without further advertisement if so requested by the complainant or its
317 solicitor or counsel; that the said master shall require the purchaser to pay in cash or receiver's certificates authorized to be issued by order of this court in this cause by Thomas Thacher, receiver, on the day of sale the sum of three hundred and twenty-five thousand dollars ($325,000.00), and the balance of the said pur-

chase-money at the time of the delivery of the master's deed be paid in cash or in the receiver's certificates aforesaid or in the bonds and coupons of June 1st, 1870, secured by the mortgages above mentioned, which bonds and coupons shall be received and accepted in payment of said balance to the extent and for the amount which the holders thereof would be entitled to receive in the distribution of the proceeds of said sale, as hereinafter provided; that at and upon the making of said sale the said master shall make and execute a proper and suitable deed or deeds or instruments of conveyance of the said mortgaged premises and property to the purchaser or purchasers at the said sale, and that he do also forthwith report to this court if in session, and if not in session then to the next term thereof, the sale for approval and confirmation, and upon the approval and confirmation of the said sale the said deed or deeds shall be delivered to the said purchaser or purchasers, and upon his or their paying the amount of the purchase price thereof he or they shall be put into possession of the mortgaged premises and property; that out of the cash payment to be made by the purchaser or purchasers as herein ordered there shall be paid by the said master the following sums:

First. The fees of the master for his services in executing this decree and his necessary and reasonable expenses and disbursements.

Second. The other proper costs of this suit to which the complainants are entitled, to be taxed by the clerk of this court.

318 Third. All the certificates heretofore issued by Thomas Thacher, the receiver heretofore appointed herein under the orders of this court, which have not been received by the said master in payment of purchase-money, as hereinabove provided.

The balance of the proceeds of sale up to the full amounts herein and hereby found due on seventeen (17) bonds aforesaid of June 1st, 1870, and on the two thousand two hundred and fifty-six (2,256) bonds of the Wabash, St. Louis and Pacific Railway Company aforesaid shall be paid over by the master to the complainants herein as trustee in order that the complainant in the execution of its trust may distribute same, which it shall do as follows:

Seventeen three thousand and twenty-fifth ($\frac{17}{3025}$) portion thereof to the holders of the said seventeen (17) bonds and coupons as aforesaid *pro rata* among the several holders thereof, and three thousand and eight three thousand and twenty-fifth ($\frac{3008}{3025}$) portions to the holders of the two thousand two hundred and fifty-six (2,256) bonds made by the Wabash, St. Louis and Pacific Railway Company March 1st, 1881, to be distributed *pro rata* among the several holders of the said two thousand two hundred and fifty-six (2,256) bonds until the said two thousand two hundred and fifty-six (2,256) bonds are paid in full, after which the entire residue, if any, shall be paid to the holders of the said seventeen (17) bonds until they are paid in full. If such balance of the proceeds of sale shall be more than sufficient to pay the amounts found due or to become due herein upon the said seventeen (17) bonds of the Missouri, Iowa and Nebraska Railway Company of June 1st, 1870, and the said two thousand two hundred and fifty-six (2,256) bonds of the Wabash,

St. Louis and Pacific Railway Company of March 1st, 1881, as aforesaid, then the balance after the payments aforesaid shall
319 be paid into court to await the further order of this court for the disposal thereof.

That upon the confirmation of the said sale The Missouri, Iowa and Nebraska Railway Company and the other defendants and all or any person or persons, party or parties, claiming by or under them or either or any of them shall be absolutely barred, foreclosed, and precluded from all right, title, interest, claim, or equity of redemption in or to the whole or any part of the above-described premises or property.

And it is further ordered, adjudged, and decreed that the defendants The Missouri, Iowa and Nebraska Railway Company, The Humeston and Shenandoah Railroad Company, and The Mercantile Trust Company shall each make, execute, and deliver to the purchaser or purchasers at the said sale, when the said sale shall have been approved and confirmed by the court, proper and suitable deeds or instruments of conveyance of the said mortgaged premises and property, conveying to the said purchaser or purchasers all the right, title, and interest of the said defendants of, in, and to the mortgaged premises and every part and parcel thereof.

O. G. Dusouchet, claiming to be the holder of fourteen (14) of the seventeen (17) bonds aforesaid, having applied herein for leave to be made a party hereto, the court denies such application; but this decree is made and entered and the denial of such application is made without prejudice to any of the claims of the holders of any of said fourteen (14) bonds.

Any and all questions on behalf of the holders of said fourteen (14) bonds that may exist of any kind as to the payment of said bonds, coupons, and interest, and including any question as to the right of the holder of said bonds of priority of payment of amount thereof or proportion of proceeds of sale, are expressly re-
320 served for future consideration, and any holder of any of such bonds is given until the decree of confirmation to file his petition of intervention; and if any holder thereof shall fail to intervene by such time, then distribution shall be made as hereinbefore indicated; but if such petition be filed by such time, then no distribution shall be made by the trustee until the further order of this court, and the court retains jurisdiction therefor.

And it is further ordered, adjudged, and decreed by the court that nothing herein contained shall be taken or construed to prejudice that part of the cross-bill of the Humeston and Shenandoah Railroad Company making a claim for improvements, and the same shall be heard and determined upon issues joined precisely as if this decree had not been rendered prior to the disposition of that part of the said cross-bill, and the said defendants in said cross-bill are now and hereby assigned to answer that part of the said cross-bill on or before the August rule day; but this clause shall not affect the foreclosure of the mortgage or the sale of the property as hereinbefore decreed.

And it is further ordered, adjudged, and decreed that this cause,

as to all the matters now in controversy or hereafter coming in controversy between the plaintiff and any and all the intervening claimants, including those who may intervene in the future on claims now or hereafter in existence, is continued until the further order of the court, and such rights and claims and matters in controversy are in nowise affected or determined by this decree, but this clause shall not affect the foreclosure of the mortgage or the sale of the property as hereinbefore decreed.

(Signed) J. M. LOVE, *Judge.*

July 8, 1886.

321 UNITED STATES OF AMERICA, } ss:
Southern District of Iowa, Eastern Division, }

I, H. K. Love, clerk of the circuit court of the United States in and for the southern district of Iowa, eastern division, do hereby certify that the foregoing writing is a full, true, and complete copy of the supplemental decree made and entered in the above-entitled cause, as full, true, and complete as appears by the original now of record in my office at Keokuk.

Witness my hand and the seal of said circuit court hereto affixed, at my office, at Keokuk, this 17th day of April, A. D. 1890.

[SEAL.] H. K. LOVE, *Clerk,*
By ERIE J. LEECH, *Deputy.*

Said Exhibit F above referred to is in words and figures following, to wit:

(EXHIBIT "F.")

United States Circuit Court, District of Iowa, October Term, 1880.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee, }
vs.
THE MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY and Others. }

322 LEE, HIGGINSON & COMPANY }
vs.
THE MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY, THE FARMERS' LOAN & TRUST COMPANY, and Others. } Cross-Bill.

This cause having this day — brought on to be heard upon the original bill of complaint herein, and upon the answer of the defendant The Missouri, Iowa and Nebraska Railway Company thereto and the answer of the defendants Lee, Higginson & Company, and upon the replications to the said answer, and upon the cross-bill and amended cross-bill of said Lee, Higginson & Company, and the answers and amended answers thereto of the defendants The Missouri, Iowa & Nebraska Railway Company and The Farmers' Loan & Trust Company and the replications to the same, and upon the

proofs taken and filed on behalf of the various parties thereto, and thereupon the cause coming on to a final hearing, and after hearing David McClure, Esq., counsel for the complainant The Farmers' Loan & Trust Company; Jas. D. Campbell, Esq., counsel for Lee, Higginson & Company, and F. T. Hughes, Esq., and A. J. Baker, Esq., counsel for the Missouri, Iowa & Nebraska Railway Company and certain bondholders, and the court, being fully advised in the premises, doth find it to be proved and doth find and adjudge that all the material allegations in the said original bill of complaint filed herein by and on behalf of the Farmers' Loan & Trust Company, trustee, contained and set forth are true, and that the equities are with the said original complainant as against the said defendants and cross-complainants herein.

That the defendants The Missouri, Iowa & Nebraska Rail-
323 way Company did make and deliver unto the said Farmers' Loan & Trust Company, as trustee, the several instruments, mortgages, and deeds of trust mentioned and recited in the complainant's bill of complaint for the purpose of securing the payment of the principal and interest of the six thousand bonds in the said mortgage or deeds of trust mentioned; that of the said six thousand bonds the said defendant railway Co. hath issued, sold, and negotiated three thousand and twenty-five bonds, numbered from one (1) to three thousand and twenty-five (3,025), inclusive; that no part of the principal of the said bonds is now due, and that there is now due and owing from the said defendant, The Missouri, Iowa & Nebraska Railway Company, to the said Farmers' Loan & Trust Company, trustee, for the accrued interest on the said several bonds so issued, sold, and negotiated, the sum of $105,875.00, with interest, at the rate of six per cent. per annum, from the first day of June, 1873, to the date of this decree; the like sum of $105,875.00, with interest, at the rate of six per cent. per annum, from the first day of December, 1873, to the date of this decree; the like sum of $105,875.00, with interest, at the rate of six per cent. per annum, from the first day of June, 1874, to the date of this decree.

The like sum of $105,875.00, with interest, at the rate of six per cent. per annum, from the first day of December, 1874, to the date of this decree; the like sum of $105,875.00, with interest, at the rate of six per cent. per annum, from the first day of June, 1875, to the date of this decree; the like sum of $105,875.00, with interest, at the rate of six per cent. per annum, from the first day of December, 1875, to the date of this decree.

The like sum of $105,875.00, with interest, at the rate of six per cent. per annum, from the first day of June, 1876, to the date of this decree; the like sum of $105,875.00, with interest, at the
324 rate of six per cent. per annum, from the first day of December, 1876, to the date of this decree; the like sum of $105,875.00, with interest, at the rate of six per cent. per annum, from the first day of June, 1877, to the date of this decree; the like sum of $105,875.00, with interest, at the rate of six per cent. per annum, from the first day of December, 1877, to the date of this decree.

The like sum of $105,875.00, with interest, at the rate of six per cent. per annum, from the first day of June, 1878, to the date of this decree; the like sum of $105,875.00, with interest, at the rate of six per cent. per annum, from the first day of June, 1879, to the date of this decree; the like sum of $105,875.00, with interest, at the rate of six per cent. per annum, from the first day of December, 1879, to the date of this decree; the like sum of $105,875.00, with interest, at the rate of six per cent. per annum, from the first day of June, 1880, to the date of this decree.

Also the sum of (82,935.40) eighty-two thousand nine hundred and thirty-five & $\frac{40}{100}$ dollars, being the interest accrued upon the said principal debt from the first day of June, 1880, to the date of this decree, amounting in all to the sum of one million five hundred and sixty-five thousand one hundred and eighty-five dollars and forty cents, together with the interest on the said several above-mentioned sums, as above stated, and being for the interest heretofore accrued upon the said 3,025 bonds so issued as aforesaid.

That *of* the said bonds above recited, including the 660 bonds last issued, the validity of which is denied by the said cross-complainants, being bonds numbered (2366) two thousand three hundred and sixty-six to (3025) three thousand and twenty-five, inclusive, were duly and legally issued by the said defendant, The Missouri, Iowa and Nebraska Railway Company, and are valid and
325 outstanding obligations of the said defendant, and the cross-bill of the said cross-complainants is dismissed.

Third. The payment of the aforesaid indebtedness and of all the aforesaid 3,025 bonds, with the coupons thereon, is secured by two separate mortgages set forth in the bill of complaint herein, namely, a mortgage bearing date the first day of June, 1870, upon the following-described premises, viz., all the right, title, and interest of the party of the first part, acquired in any and all manners whatsoever, of, in, and to all and singular the pieces or parcels of land situated, lying, or being in the States of Missouri and Iowa now purchased or acquired or which may at any time hereafter be purchased and acquired for the railway of the said party of the first part extending from the city of Alexandria, on the Mississippi river, in the State of Missouri, through the counties of Clark and Scotland, in said State of Missouri, and the counties of Van Buren, David, and Appanoose, in the State of Iowa, to the town of Centerville, in said county of Appanoose, and thence west, through the said county of Appanoose and the counties of Wayne, Decatur, Ringgold, Taylor, Page, and Fremont, in the State of Iowa, to a point on the Missouri river in the State of Iowa, near Nebraska City, in the State of Nebraska, and all and singular the railroad now surveyed and being constructed or that may be hereafter surveyed and constructed and leading from the Mississippi to the Missouri river and lying and being in the State of Missouri and Iowa, together with all and singular the right of way of the said road now belonging or to belong to the party of the first part, and also the right of the said party of the first part to construct and maintain along said route a railroad, as well as all other rights and privileges and

franchises belonging to the said party of the first part in, upon,
326 or pertaining to said railroad, including *including* its road-bed made or to be made, grading, embankments, excavations, sidings, culverts, bridges, cross-ties, superstructures, track or tracks, iron, rails, fences, stations and station-houses, depot grounds, and all the work, materials, and operations for the construction of the said railroad now made, done, or acquired or which *it* may at any time be made, done, or acquired by the said party of the first part and which in anywise appertains or shall appertain to said railroad, and all and singular the buildings, machine shops, engine-houses, depots, turnouts, wood and water stations, water tanks, and all other buildings or structures, improvements, and constructions of every nature and description now belonging or to belong to the said party of the first part and in anywise appertaining or to appertain to said railroad, together with all and singular its alienable franchises, emoluments, income and advantages, tenements and hereditaments, and all and singular the equipments or furniture, motive power, rolling stock, engines, tenders, cars, carriages, tools, fixtures, and machinery of every kind, nature, and description now belonging to, owned, possessed, or acquired or hereafter to be owned, possessed, or acquired by the party of the first part, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all lands and real estate to which the said party of the first part may become entitled through or by reason of the construction of the said railroad, and all the estate, right, title, and interest, property, possessions in law or in equity of the said party of the first part now acquired or hereafter to be acquired, together with all and singular the rights, privileges, corporate property, and franchises of said railway company, each and every part and parcel thereof, and all the appurtenances to the above-described
327 premises belonging or in anywise appertaining.

And also a second mortgage, bearing date the 6th day of January, 1879, being in the nature of a mortgage of further assurance, upon the following-described premises, viz: All the right, title, and interest of the party of the first part acquired in any and all manners whatever of, in, and to all and singular the pieces or parcels of land situated, lying, or being in the said counties of Schuyler & Clark, in the State of Missouri, and Lee, in the State of Iowa, now purchased and acquired or which may at any time hereafter be purchased or acquired for the railway of the said party of the first part, and all and singular the railroad now surveyed and being constructed or that may hereafter be surveyed and constructed, together with all and singular the right of way for said road now belonging or to belong to the party of the first part, and also the right of the said party of the first part to construct and maintain along said route through said counties of Schuyler and Clark, in the State of Missouri, and Lee, in the State of Iowa, as well as all other rights, privileges, and franchises belonging to the said party of the first part in, upon, or pertaining to said railroad, including its road-bed, made or to be made, gradings, embankments, excavations, sidings, culverts, bridges, cross-ties, superstructures, track or

tracks, iron rails, fences, stations and station-houses, depot grounds, and all the work materials and operations for the construction of said railroad now made, done, or acquired or which may at any time be made, done, or acquired by the said party of the first part and which in anywise appertains or shall appertain to said railroad, and all and singular the buildings, machine shops, engine-houses, depots, turnouts, wood and water stations, water tanks, and all other buildings or structures, improvements, and construc-
328 tions of every nature and description now belonging to or to belong to the said party of the first part and in anywise appertaining or to appertain to said railroad, together with all and singular its alienable franchises, emoluments, income, and advantages, tenements, hereditaments, and appurtenances, and all and singular the equipments, furniture, motive power, rolling stock, engines, tenders, cars, carriages, tools, fixtures, and machinery of every kind, nature, and description now belonging to, owned, possessed, or acquired or hereafter to be owned, possessed, or acquired by the party of the first part, and the reversions and reversion, remainder and remainders, rents, issues, and profits thereof, and all lands and real estate to which said party of the first part may become entitled through or by reason of the construction of said railroad through said counties of Schuyler and Clark, in the State of Missouri, and Lee, in the State of Iowa, and the interest in said railroad and wagon bridge across the Des Moines river, and all the estate, right, title, interests, property, possessions, in law or in equity, of the said party of the first part, now acquired or hereafter to be acquired, together with all and singular the rights, privileges, corporate property, and franchises of said railway Co., each and every part and parcel thereof, and all the appurtenances to the above-described premises belonging or in anywise appertaining.

The said two mortgages constitute a first and paramount mortgage lien upon all the premises described therein or in either of them.

Fourth. The said mortgaged premises are so situated that they cannot nor can any part thereof be sold in parcels, as it is necessary that they be sold as an entirety.

Wherefore it is now ordered, adjudged, and decreed that
329 the defendant The Missouri, Iowa and Nebraska Railway Company shall pay to the complainant, within sixty days from the date of this decree, the said sums hereinbefore found to be due and owing and the interest thereon, together with interest on the amount so recovered from the date of this decree at the rate of six per cent. per annum, and with interest on the said principal debt of $3,025,000.00 (three million and twenty-five thousand dollars) at the rate of six per cent. per annum from the date of this decree, and also the costs and expenses of this suit, to be taxed, and the allowance to the said trustee for compensation, disbursements, and expenses and the allowance to counsel as herein allowed; and in default thereof, then the mortgaged premises hereinbefore described be sold at public auction at the front door of the building in which the

United States courts are held, in the city of Keokuk, in the State of Iowa, by P. T. Lomax, Esq., a master of this court.

That the compensation of such master shall hereafter be fixed by the court. The said master is hereby directed to give notice of such time and place of sale by advertising the same in the Gate City, a paper published at the city of Keokuk, in the State of Iowa, and in the Financial Chronicle, published at the city of New York, in the State of New York, each once a week for four successive weeks, the last one of which insertions shall be at least ten and not more than twenty days before such day of sale, which notice shall contain a brief description of the premises to be sold; that the mortgaged premises be sold absolutely and as an entirety and not subject to statutory redemption, to which all parties hereto consent, and that any party to this suit may bid for and purchase the same, the said clause as to redemption being consented to in open court;
330 that the said master shall adjourn and postpone said sale from time to time at the request of the complainant or of its solicitor or counsel.

The said master shall require the purchaser to pay in cash on the day of sale an amount of money sufficient to pay the amount of the said master's fees & costs & expenses of sale, the costs of this suit, & the amounts herein allowed for compensation & expenses of the said trustee & for counsel fees, and the sum of fifty thousand dollars in addition thereto, and the balance of the said purchase-money at the time of the delivery of the master's deed be paid in cash or in the bonds and coupons secured by the mortgages above mentioned, which bonds & coupons shall be accepted & received in payment of said balance to the extent and in the amount which the holders thereof would be entitled to have in the distribution of the proceeds of said sale, as hereinafter provided.

That at and upon making the said sale the said master do make and execute a proper and suitable deed or instrument of conveyance of the said mortgaged premises to the purchaser at the said sale, and that he also forthwith report to this court if in session, and if not in session then to the next term thereof, when said court may either approve and confirm said sale or disapprove the same and order another sale of the mortgaged premises, and upon the confirmation of the said sale the said deed shall be delivered to the said purchaser upon his paying the amount of the purchase price therefor, & he shall be let into possession of the mortgaged premises.

That out of the cash payment to be made by the purchaser, as herein ordered, there shall be paid by the said master the following sums, namely:

1. The fees of the master for services in executing this decree and his necessary and reasonable disbursements.

331 2. To The Farmers' Loan & Trust Company, complainant, for their reasonable services & compensation as trustee and their disbursements and expenses in the execution of their trust, the sum of $8,000.

3. To Mess. Turner, Lee & McClure, solicitors for the Farmers'

Loan & Trust Company, and for their counsel fees in this action, the sum of $8,000.

4. The other proper costs of this suit to which the plaintiffs are entitled to be taxed by the clerk of this court, $—.

5. To James D. Campbell, Esq., solicitor and of counsel for Lee, Higginson & Co., and for his counsel fees in this action, the sum of $4,500.

6. To F. T. Hughes, Esq., and A. J. Baker, Esq., solicitors & of counsel for the remaining bondholders, & for their counsel fees in this action, the sum of $4,500.

7. The balance of the proceeds of sale, in case the amount of such balance shall not be more than sufficient to pay in full the amount herein & hereby found due and to become due, shall be distributed *pro rata* among the several holders or overdue coupons and the holders of bonds on which interest will have accrued issued under the mortgage above recited as aforesaid.

If the said proceeds of sale shall be more than sufficient to pay the amount found due or to become due herein, then the balance, after the payments aforesaid or so much as may be necessary, shall be distributed *pro rata* among the holders of the said bonds in payment of or on account of the principal debt of the said bond, and in case there shall be any surplus remaining after the payment in full of said bonds, then the same shall be paid into court to await the further order of disposition thereof.

Any party to this suit may apply to the court at the —
332 of this decree for further relief.

That at and upon the confirmation of the said sale the said Missouri, Iowa and Nebraska Railway Company and all or any persons or person, parties claiming by or under them, & the defendants & each of them shall be absolutely barred, foreclosed, and precluded from all right, claim, or equity of redemption in or to the whole or any part of the above-described premises.

That the said defendant The Missouri, Iowa and Nebraska Railway Company do also make, execute, and deliver to the said purchaser at the said sale, when said sale shall have been approved and confirmed by this court, a proper and suitable deed and instrument of release of the said mortgaged premises, conveying to the said purchaser all the right, title, and interest of the defendant railway company of, in, and to the said mortgaged premises and every part thereof; that the sum of eighteen thousand dollars, the proceeds of the sale of sixty bonds for the first extension in the contract made by the said railway company with Thomas B. Hill & Company and which sum is now on deposit to the credit & subject to the order of the Farmers' Loan and Trust Company, trustee, be paid to the registry of the court, to be applied to the payment of the expense of the construction of said extension under the order of this court.

The foregoing decree, with the exception of that portion relating to the 660 bonds last issued (the validity of which is denied by the

cross-complainants), is rendered by the consent of all parties in interest given by counsel in open court.

Oct. 22, 1880.

GEO. W. McCRARY,
Circuit Judge.

(Signed) J. M. LOVE,
District Judge.

333 United States Circuit Court, Southern District of Iowa, Central Division.

I, E. R. Mason, clerk of said court, do hereby certify that the above and foregoing transcript contains a full, true, and complete copy of the decree in a certain cause adjudicated in said court, wherein The Farmers' Loan and Trust Company, trustee, was complainant and The Missouri, Iowa and Nebraska Railway Company *et al.* were defendants, as full, true, and complete as the original of the same now remains of record in my office.

[SEAL.] In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of Des Moines, in said district, this 22 day of April, A. D, 1890.

E. R. MASON,
Clerk U. S. Circuit Court, Southern District of Iowa.

And afterwards, to wit, on the first day of July, A. D. 1890, there was filed in said cause the joint answer of Clark County *et al.* in words and figures following, to wit:

(*Joint Answer of Clark County et al.*)

In the Circuit Court of the United States, Eastern Division of the Eastern District of Missouri.

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants.

334 Answer of Clark County and its officers to bill of revivor and first and second amendments thereto.

The joint and several answer of The County of Clark, J. E. Todd, Charles Seyb, and George Harter, justices of the county court of said county, and O. S. Callihan, collector of the revenue for said county, to the bill of revivor and the first and second amendments thereto exhibited by the Keokuk and Western Railroad Company against them and other defendants herein.

These defendants, now and at all times saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said bill and amendments thereto contained, for answer thereunto or to so much and to such parts thereof as these

defendants are advised it is material or necessary for them to make answer unto, answering, say:

1. They admit that the complainant, the said Keokuk and Western Railroad Company, is a corporation duly organized pursuant to the laws of the State of Iowa, but aver that said corporation had no existence prior to, but was organized since, the 20th day of August, 1886. They admit that these defendants, J. E. Todd, Charles Seyb, and George Harter, are the justices of the county court of Clark county, and that defendant O. S. Callihan is the collector of the revenue for said county.

They disclaim any interest herein in so far as the same is intended or may effect the counties of Scotland and Schuyler and the other several defendants herein.

They admit the dissolution of the Missouri, Iowa and Nebraska Railway Company, and that Charles Secor and his co-complainants in the original bill filed in this cause have no longer any interest in the property of said company.

335 They admit that Charles A. Secor, James F. Secor, John E. Walker, George S. Knox, and Charles H. Mellen exhibited their bill of complaint in this honorable court against the counties of Scotland, Clark, and Schuyler, in the State of Missouri; the county courts and their county justices and collectors of revenue for said several counties; John E. Holliday, the auditor of the State of Missouri, and The Missouri, Iowa and Nebraska Railway Company, as defendants thereto, and allege that said bill was exhibited and filed in this court on the 6th day of August, 1879; but defendants deny that, after stating as therein mentioned, said bill prayed that each and every of said defendants and all others acting under or through them or their successors in office be restrained and enjoined until the year 1892 from levying, assessing, or collecting, or attempting so to do, *of* any tax or taxes upon or against the property of the said Missouri, Iowa and Nebraska Railway Company.

After the filing of said original bill in said cause and before answer was made thereto by all the defendants therein, to wit, on the 7th day — January, 1880, the said complainants filed in said cause an amended bill of complaint in lieu and stead of said original bill and superceding the same and setting up all matters and things upon which they relied for relief as therein prayed for.

To said amended bill all the defendants thereto, except Thomas Holliday (who had succeeded the said Walker as auditor of State and admitted as a defendant in said suit) and The Missouri, Iowa and Nebraska Railway Company, with leave of court, made due answer on December 7th, 1881. On December 13th, 1881, said complainants, with leave of court, filed in said cause an amendment to said amended bill, and on March 30th, 1882, leave of court

336 was given defendants to plead to said bill as amended on or before May rules, 1882.

These defendants aver that neither in said original bill nor in said amended bill nor in said amendment to said amended bill did the complainants therein pray that the defendants be restrained and enjoined until the year 1892 from levying, assessing, or collecting,

or attempting so to do, any tax upon or against the property of the said Missouri, Iowa and Nebraska Railway Company situated in the county of Clark, nor therein did the complainants allege or set forth any matter entitling or claiming to entitle complainants therein to have nor therein did they, complainants, pray to have the property of the said Missouri, Iowa and Nebraska Railway Company in said county of Clark exempt from taxation for any year subsequent to the year 1879.

In the prayer for relief in said original bill the complainants prayed as follows, viz: "That defendants Boulware, Chappell, and Stafford, as such justices and county court of Clark county, be enjoined and restrained from levying and causing to be collected, or either, any taxes whatever, whether State, county, school, municipal, or otherwise, upon the property of defendant The Missouri, Iowa and Nebraska Railway Company for the year 1879 or any year prior thereto, or from causing any such taxes heretofore levied from being collected by levy, distraint, sale of property, institution of suits, or otherwise, and that they do no act concerning the premises whatever."

And in said amended bill the complainants, thereinafter charging as follows, to wit: "The said several and respective county courts and the said several and respective collectors of revenue of the said several and respective counties have caused the property of
337 said railway corporation to be assessed for taxation, and that same has been so assessed and certified by the State auditor for taxation for State, county, school, and municipal purposes, and that they, the above-named officials, are proceeding to cause said delinquent taxes to be assessed up against and collected from said railroad company, and that the said county court justices, in their said several and respective counties, have ordered suit to be brought for said several delinquent taxes heretofore assessed upon the property of said railroad company"—

Pray in their prayer for relief, as touching the foregoing matters only, as follows, viz: "Pray your honors to take cognizance of the suit and of the matters of complaint stated and to declare by decree of this court the action of the board of equalization in assessing the property of the said Missouri, Iowa and Nebraska Railway Company illegal; to declare the acts of the said auditor and the officers of said counties to be void and of no effect in law or in equity, and that the taxes charged and levied or to be hereafter charged and levied against said company and property on said assessment to be illegal and void, whether for State, county, school, or municipal or any other purpose; and that your honors may grant to your orators a writ of injunction issuing out of and under the seal of this honorable court, to be directed to the defendants hereinafter named, to restrain them and each of them and all others acting for or under them, as well as all persons claiming any right under said assessment, from instituting any suits or in any other manner proceeding to collect said taxes or any part thereof and restraining the said railroad company from paying said taxes or any part thereof; and that your honors grant unto your orators a tem-

porary writ of injunction restraining and enjoining the said defendants, as above prayed, and that on final hearing the said in-
338 junction be made perpetual by the decree of this court, and that they may have such other and further relief as in equity and good conscience they are entitled to."

In the said amendment to said amended bill, filed on December 13th, 1881, the complainants prayed only for the relief theretofore by them prayed for.

These defendants are informed and believe it is true that in said cause this honorable court made and entered a final decree upon its face of the effect as set out by the complainant in its bill of complaint herein; but they aver the fact to be, as by the whole record in said cause now remaining in this court will fully appear, that said decree was made and entered *ex parte* upon taking said amended bill as amended *pro confesso* in default of the defendants therein pleading to same, as by rule they were required, at the May rules, 1882.

And so these defendants say that that part of said decree restraining and enjoining or purporting to restrain and enjoin the said defendants, the county of Clark and the justices of the county court and collector of revenue of said county or their successors in office, from levying or collecting any taxes whatever against the said Missouri, Iowa and Nebraska Railway Company till the year 1892, was given through inadvertence, and was not and is not supported by the pleadings and prayer for relief in said cause nor by the finding of the court therein, and that the same is not of other force and effect than the restraining the collection of taxes in said pleadings mentioned, viz., the taxes for the year 1879 and antecedent years, and ought not to be taken against the said defendants therein nor their successors in office to effect any restraint or injunction against the collection of any taxes accruing against said railroad
339 property subsequent to the year 1879.

2. Further answering, these defendants admit that the Missouri, Iowa and Nebraska Railway Company executed and delivered to the Farmers' Loan and Trust Company as trustee the mortgage or deed of trust mentioned in complainant's original bill of revivor herein and bearing date June 1st, 1870, to recover certain bonds therein described.

They also admit that, as stated by the complainants in its said original bill of revivor, default having been made in the payment of the interest upon said bonds and in accordance with the terms, stipulations, and covenants in said mortgage, by a proper proceeding in that behalf against the said Missouri, Iowa and Nebraska Railway Company by the said trustee, in the circuit court of the United States for the eastern division of the southern district of Iowa, such proceedings were had as that the equity of redemption of the said mortgagor in said mortgaged property was thereby foreclosed, and, pursuant to said decree in that behalf, the said property was sold on the — day ——, 1886, at which sale Morris K. Jessup and Henry C. Thacher, as a committee of the holders of said bonds so secured by said mortgage, became the purchasers of said property, and that

thereafter said Jessup and Thacher conveyed said property to complainant, viz., December 3rd, 1886.

And defendants aver the fact to be as above stated and not as set forth in the complainant's second amendment to its said bill herein, and defendants say that complainant is estopped to deny the foregoing allegations by alleging, as it has done in its said second amendment to bill, that it claims title through foreclosure proceedings upon another and different mortgage.

But now pleading more specifically to the matters in rela-
340 tion thereto set up by complainant in its said original bill and the said amendment thereof, the defendants aver the facts to be as follows: That of the six thousand bonds of one thousand dollars each mentioned and secured by the said mortgage or deed of trust of date of June 1st, 1870, only 3,025 (numbered from 1 to 3025, inclusive) were sold and issued by the said Missouri, Iowa and Nebraska Railway Company.

That on the 6th day of January, 1879, the said Missouri, Iowa and Nebraska Railway Company executed to the said Farmers' Loan and Trust Company, as trustee, a second mortgage or deed of trust in the nature of a mortgage of further assurance to secure the payment of the same debt evidenced by the same bonds issued by said railway company and described in said first mortgage; that default having been made in the payment of interest on said 3,025 bonds so secured by said two mortgages, the Farmers' Loan and Trust Company, on the 30th day of December, 1879, filed its bill to foreclose said mortgage in the circuit court of the United States for the district of Iowa.

That thereupon such proceedings were had that on the 22nd day of October, 1880, the court by its final decree ordered that the defendants therein, the said railway company, should pay to the said complainant therein, within sixty days from the said date, the sums in said decree found to be due said complainant, viz., the sum of $3,025,000.00, being the principal of said 3,025 bonds, and $1,565,185.40, interest accrued thereon; and that in default thereof that said mortgaged property (being the property now owned by the complainant herein) be sold at the city of Keokuk, Iowa, by P. T. Lomax, master in chancery of said court.

That pending said foreclosure proceedings and before said final
decree, on, to wit, February 12th, 1880, the said Missouri,
341 Iowa and Nebraska Railway Company, of the first part, and H. C. Thacher, Henry Hill, and George Opydyke, styling themselves a committee of the bondholders of said railway company (viz., of the said bonds secured by the said mortgage), of the second part, and the Wabash, St. Louis and Pacific Railway Company, of the third part, entered into a certain contract in writing whereby it was agreed, among other things, on the part of said first party as follows:

Second. That it should procure the assent of its directors and shareholders to the consolidation of its capital stock, property, and franchises with the capital stock, property, and franchises of said third party upon the terms therein specifically provided for.

Third. That said first party should cause all the holders of its outstanding bonds to enter into covenant for cancellation of same upon receiving in exchange therefor bonds of said third party, secured as therein provided for by a new mortgage on said railroad.

Sixth. That first party should indemnify third party against all other indebtedness, so that said railroad shall be transferred to said third party free from any lien or indebtedness other than that of said mortgage bonds.

Seventh. In the event the first party should fail to secure the consent of its shareholders to such consolidation, then said first party bound itself to lease its said railroad and equipment "in perpetuity" to said third party on condition that said third party should operate the same and pay six per cent. interest on the said bonds of said first party and perform other agreements therein contained. Said second party agreed that if said exchange of bonds should not be effected, and that the said mortgage to secure the same should
342 be foreclosed and the property sold, that they would bid same in at sale and after confirmation thereof would convey same to said Wabash, St. Louis and Pacific Company by deed by incorporation of a new company and consolidation thereof with said Wabash Company or by lease, at the option of said Wabash Company, all as provided for in the minutest details in said contract set forth; and said third party therein agreed to procure the consent of its directors and shareholders to such consolidation, or in event of failure thereof to accept said lease, but reserved to itself the right in certain contingencies therein named to have said railroad transferred to it in case of purchase thereof by said second parties, all as will more fully appear by a copy of said agreement herewith filed and marked "Exhibit A," and to which these defendants beg to refer and make a part of this answer as fully as if set forth *in extenso* herein.

That afterwards, to wit, on the 3rd day of September, 1880, said Missouri, Iowa and Nebraska Railway Company executed its certain writing, called an indenture of lease, whereby it transferred to said Wabash, St. Louis and Pacific Railway Company for the term of ninety-nine years, renewable forever, the said railroad and property of said first-named railway company, whereby said Wabash Company agreed to set apart thirty per cent. of the gross earnings of said railroad and apply same, first, to the payment of all lawful taxes and assessments levied on said property; second, to the payment of the interest on the said mortgage bonds of said Missouri, Iowa and Nebraska Railway Company of date of June 1st, 1870; and, third, the residue to said lessor. And thereupon said Wabash, St. Louis and Pacific Railway Company entered into possession of said railroad and property and so remained in the exclusive possession thereof till under a decree of this
343 honorable court, made on the 29th day of May, 1884, in the case of The Wabash, St. Louis and Pacific Railway Company *vs.* The Central Trust Company of New York, the said railroad company went into the hands of Thomas E. Tutt and Solon Humphreys, receivers appointed by this court in said cause; that said rail-

road remained in the exclusive possession of said Tutt and Humphreys until the — day of August, 1885, when, under another decretal order of this court in said cause, made June 9th, 1885, said Humphreys and Tutt delivered said property over to Thomas Thacher, receiver appointed on said day by this court of all the property of the Missouri, Iowa and Nebraska Railway Company, and that said property so remained in the exclusive possession of said Thacher until the same was sold by said Lomax, master in chancery, and said sale confirmed to Jessup and Thacher, as hereinafter more particularly set out; which said indenture of lease is the same as that referred to by complainant in its second amendment to bill as Exhibit "A," and to which these defendants now beg leave to refer as fully as — set forth at length in this answer.

On March 1st, 1881, a certain indenture was made and entered into by and between the Missouri, Iowa and Nebraska Railway Company and the Mercantile Trust Company, as trustee, being the same mortgage or deed of trust referred to by complainant in its second amendment to its bill herein as Exhibit "B," and to which these defendants now beg leave to refer as fully as if the same was written out in full herein, wherein and whereby the said Missouri, Iowa and Nebraska Railway Company, in pursuance of and referring to said contracts of date February 12th, 1880, and September 3rd, 1880, mortgaged its said railroad and property to secure the payment of two thousand two hundred and sixty-nine bonds of one thou-
344 sand dollars each and interest thereon made or to be made by said Wabash, St. Louis and Pacific Railway Company, and payable as therein provided.

Which said bonds were made for the purpose of being exchanged for the said bonds of the Missouri, Iowa and Nebraska Railway Company secured by said mortgage of June 1st, 1870.

In said indenture of mortgage it was provided as follows, to wit: "All bonds that shall be received by said trustee in the course of said exchange shall be retained by said trustee for the protection of the persons who shall hold or own the bonds hereby secured in the event of any holder or holders of the Missouri, Iowa and Nebraska Railway Company bonds refusing to exchange or claiming priority over those who shall make such exchange, and the bonds so received in exchange shall, for the purpose of preserving the rights and security of the holders of the bonds given in exchange for them and to prevent their use for any other purpose, be endorsed as follows: 'This bond has been deposited with the Mercantile Trust Company, trustee, under the provisions of a certain deed of trust or mortgage made by the Missouri, Iowa and Nebraska Railway Company, dated March 1st, 1881, conveying to the Mercantile Trust Company, as trustee, the railroad of the Missouri, Iowa and Nebraska Railway Company. It is not assignable for any purpose, but is to be used only in foreclosure, if need be, in pursuance of said trust.'"

And said mortgage or deed of trust further provided as follows: "It is, however, expressly understood and agreed that the said trustee shall not be charged with the duty of exchanging the said bonds, but it shall be the duty of the said trustee to authenticate

the said bonds and deliver them over to the party of the first part for the purpose of such exchange, and the party of the first
345 part hereby agrees to effect and carry out the exchange of bonds hereinbefore contemplated and provided for and deliver over to the said trustee the bonds of the first party which it shall receive in exchange for the bonds of the Wabash, St. Louis and Pacific Railway Company to be delivered to it by said trustee as aforesaid."

The said Missouri, Iowa and Nebraska Railway Company never did cause all the holders of its said bonds issued and secured by said mortgage of date June 1st, 1870, to take in exchange therefor the said bonds and stock of the Wabash, St. Louis and Pacific Railway Company secured by the mortgage last aforesaid, nor did all the holders of the said bonds secured by the mortgage of 1870 ever make such exchange. Defendants are informed and believe that all the holders of said three thousand and twenty-five bonds, except the holders of seventeen thereof, did exchange for said Wabash bonds and preferred stock; that the said seventeen of said bonds, whose holders refused so to exchange, amounted, principal and interest, on July 8th, 1886, to the sum of $38,524.90; but these defendants charge the fact to be that it was not the intention of the holders of said 3,008 of said bonds so exchanged, nor of any of them, nor any of the parties entering into said arrangement, that said bonds of the Missouri, Iowa and Nebraska Railway Company secured by the mortgage of June 1st, 1870, should be cancelled, or that the debt evidenced thereby should be in any manner affected, or their rights under said mortgage or the decree of foreclosure thereof of October 22nd, 1880, should be in any manner annulled or vacated, or the right to execute same in any manner impaired, nor did said exchange have any such effect in law or in fact; on the contrary thereof, the said 3,008 bonds of June 1st, 1870, were after such exchange held by the Mercantile Trust Com-
346 pany as trustee for the holders of the bonds and stock taken in exchange therefor as collateral security for said Wabash bonds to — taken in exchange and not otherwise, and that they remained in full force and effect.

On May 28th, 1884, the said Wabash, St. Louis and Pacific Railway Company, being hopelessly insolvent, filed in this honorable court its bill in equity against the Central Trust Company, the said Farmers' Loan and Trust Company, the said Missouri, Iowa and Nebraska Railway Company, the said Mercantile Trust Company, and a large number of other defendants, alleging its insolvent condition and praying for the appointment of a receiver to take charge of, operate, and care for its various lines of railroad, including said line so possessed under said contracts made with the said Missouri, Iowa and Nebraska Railway Company; and thereupon, jurisdiction over all said defendants being acquired, such proceeding were had in said cause that afterwards, to wit, on May 28th, 1884, Solon Humphreys and Thomas E. Tutt were duly appointed as such receivers, who thereupon went into possession of said Missouri, Iowa and Nebraska railroad and so continued in the possession thereof,

using and operating same, until the same was turned over to Thomas Thacher, special receiver of said railroad, afterwards and on the 9th day of June, 1885, appointed by this court in said cause.

On said 9th day of June, 1885, this honorable court, in a proceeding duly had in said cause, upon the petition of the said Farmers' Loan and Trust Company, setting up all the foregoing facts, ordered, adjudged, and decreed, among other, as follows, namely: "It is further ordered, adjudged and decreed that the prayer of the petitioner herein be granted, in this, to wit: That the petitioner have leave to enforce the decree of the United States circuit court
347 for the district of Iowa made on or about the 22nd day of October, 1880, in the suit therein pending in which The Farmers' Loan and Trust Company was complainant and The Missouri, Iowa and Nebraska Railway Company was defendant, and to execute the said decree and sell the property and premises therein referred to under and in pursuance of the provisions thereof: Provided, however, that no part of the premises affected by said decree be sold until after the 1st day of June, in the year 1886;" and therein this court further ordered, adjudged, and decreed as follows, to wit: "It is further — that the said Farmers' Loan and Trust Company or the several owners or holders of the bonds secured by the mortgage of said Missouri, Iowa and Nebraska Railway Company to said Farmers' Loan and Trust Company of New York before any sale of said property under said decree of October 22nd, 1880, shall, unless the Wabash, St. Louis and Pacific Railway Company shall otherwise agree and this court shall otherwise direct, cause all the bonds of said Wabash, St. Louis and Pacific Company issued and dated on or about the first day of March, 1881, and secured by a certain mortgage or deed of trust executed by the said Missouri, Iowa and Nebraska Railway Company on or about the date last aforesaid to the Mercantile Trust Company of New York to be brought into this court for cancellation or for surrender to the said Wabash, St. Louis and Pacific Railway Company or to the receivers thereof, and this order shall be without prejudice to the rights of the Mercantile Trust Company of New York, as trustee, in the mortgage executed by the Missouri, Iowa and Nebraska Railway Company, to wit, on or about the 1st day of March, 1881, to secure the aforesaid bonds of the Wabash, St. Louis and Pacific Railway Company."

Which said decree yet remains of record in this court, a duly certified copy being hereto attached and marked "Exhibit K."

348 On April 8th, 1886, the said Farmers' Loan and Trust Company filed in the circuit court of the United States for the eastern division of the southern district of Iowa (to which said cause had been transferred upon the division of said district by act of Congress) its supplemental bill in such foreclosure proceedings against The Missouri, Iowa and Nebraska Railway Company, the original defendant therein; The Wabash, St. Louis and Pacific Railway Company, The Humeston and Shenandoah Railroad Company, and The Mercantile Trust Company, and therein, after alleging the foregoing matters and filing as exhibits and referring to the said

contract of February 12th, 1880, and the said indenture of lease of September 3rd, 1880, and the said mortgage or deed of trust by the Missouri, Iowa and Nebraska Railway Company executed March 1st, 1881, to secure said bonds of the said Wabash, St. Louis and Pacific Railway Company, prayed, among other things, for relief as follows, to wit: "That your orator may have the full benefit of the said suit against all the defendants herein named, and may have the same relief against each and every of the defendants as your orator might or could have had against the defendant The Missouri, Iowa and Nebraska Railway Company in case the matter subsequent to the said decree herein averred had not occurred, and that the former decree made herein may be promptly and immediately executed, and that your orator may have such other and further relief in the premises as to your honors shall seem meet." Process having been duly issued and served, and the court having obtained jurisdiction as well of the subject-matter as of the person of the defendants therein, the said court, on the 8th day of July, 1886, after a full hearing on the merits of all the matters involved, made and entered its decree, among other things, as follows, viz:

349 "It is further ordered, adjudged, and decreed that the equities are with the complainant, and that the facts and circumstances set forth in the supplemental bill of complaint herein are in substance true; that the decree of foreclosure and sale made and entered herein on the 22nd day of October, A. D. 1880, is still in full force and is not reversed, vacated, or in any manner satisfied, cancelled, or discharged; that the holders and owners of the 3,008 bonds of the 3,025 bonds outstanding and existing under the mortgage of June 1st, 1870, made to the complainant herein and mentioned in the decree of October 22nd, 1880, exchanged the same, under and in pursuance of the provisions of the agreement above stated, for 2,256 bonds of the Wabash, St. Louis and Pacific Railway Company of one thousand dollars each, secured by the mortgage so made to the Mercantile Trust Company as aforesaid, and for $752,000.00 of the preferred stock of the Wabash, St. Louis and Pacific Railway Company, but that the holders of seventeen of said bonds of June 1st, 1870, did not exchange them for said bonds of the Wabash, St. Louis and Pacific Railway Company, but still hold and own the same; that said 3,008 bonds of June 1st, 1870, were after such exchange held by the Mercantile Trust Company as trustee for the holders of the 2,256 bonds of the Wabash, St. Louis and Pacific Railway Company and as collateral security for said 2,256 bonds.

That the holders and owners of said seventeen of the bonds of the Missouri, Iowa and Nebraska Railway Company of June 1st, 1870, secured by the mortgages to the complainant herein, did not exchange their said bonds for bonds of the Wabash, St. Louis and Pacific Railway Company, but, on the contrary, refused and still continue to refuse to exchange the same, and have claimed and still continue to claim priority over the holders of said bonds

350 who had made such exchange.

That there is now due and unpaid on each of the said Wabash, St. Louis and Pacific Railway Company bonds the sum of $1,149.10, and upon all of the said 2,256 Wabash, St. Louis and Pacific Railway Company's bonds in the aggregate the sum of $2,592,369.60, with interest thereon at six per cent. per annum from the date of this decree, payable semi-annually.

That there is now due and unpaid upon each of the three thousand and twenty-five Missouri, Iowa and Nebraska Railway Company's bonds of June 1st, 1870, the sum — $2,266.17, with interest from the date of this decree on the principal sum at the rate of seven per cent. per annum, payable semi-annually, and on the interest at the rate of six per centum per annum, and upon the said seventeen Missouri, Iowa and Nebraska Railway Company's bonds in the aggregate the sum of $38,524.90.

That the defendant The Missouri, Iowa and Nebraska Railway Company has wholly failed and neglected to pay the amount due upon the bonds and mortgages mentioned in the said decree therein and still continues to so neglect and refuse and has made default therein.

That the holders of the said seventeen bonds and coupons thereto annexed are entitled to have the said decree of October 22nd, 1880, enforced for their benefit as to the amount due on their bonds to the same extent that the holders of the other 3,008 bonds of June 1st, 1870, are entitled to have the same enforced, and that they have no priority over the holders of the said 3,008 bonds, but that the decree must be executed for the benefit of all parties interested in the said 3,025 bonds equally and *pro rata* as against each other.

Wherefore the court doth further order, adjudge, and decree
351 that defendant The Missouri, Iowa and Nebraska Railway Company do within five days from and after the date of this decree pay the amounts due on the bonds and coupons aforesaid, together with the costs and expenses of this suit, to be taxed.

That in default thereof the mortgaged premises described in the said decree of October 22nd, 1880, be sold at public auction, at the front door of the building in which the United States court *are* held, in the city of Keokuk, in the State of Iowa, by P. T. Lomax, Esq., a master of this court," &c.*l*, &c.*l*, &c.*l*. * * *

Said decree further provided for the distribution of the proceeds of sale, the making of conveyances, and other matters, all as therein yet remain of record in cause will the more fully appear, a certified copy whereof is attached as "Exhibit C" to complainant's second amendment to bill herein and to which these defendants beg to refer as fully as though — was set out in full in this answer.

In pursuance of the said decree of said circuit court of the United States for the district of Iowa, made October 22nd, 1880, and of the said circuit court of the United States for the eastern district of Missouri, made June 9th, 1885, and of the circuit court of the United States for the eastern division of the southern district of Iowa, made on July 8th, 1886, the said master in chancery proceeded to and did sell the said railroad on the 19th day of August, 1886. Said sale having been duly confirmed, a deed was made to the purchasers,

from whom the complainant herein, by mesne conveyance, acquired and now holds the title to said railroad and not otherwise.

Defendants deny that complainant have title to said railroad by virtue of any foreclosure of or sale under the said mortgage or deed of trust made by said Missouri, Iowa and Nebraska Railway
352 Company to the Mercantile Trust Company, dated March 1st, 1881.

Deny that said mortgage or deed of trust ever was foreclosed.

3. Further answering, these defendants say that the said decree entered in this court on May 10th, 1882, restraining and enjoining the levying or collecting any taxes against the said Missouri, Iowa and Nebraska Railway Company until the year 1892 ought not to be revived in favor of the complainant herein, because they say that by virtue of the contract of date February 12th, 1880, and the said indenture of lease of date September 3rd, 1880, hereinbefore referred to, the said Missouri, Iowa and Nebraska Railway Company had fully and effectually sold, disposed of, and delivered its said railway and property to the Wabash, St. Louis and Pacific Railway Company in such manner and with the intent that the same could not again revert to or become vested in said Missouri, Iowa and Nebraska Railway Company, and in fact said property never did revert to or become vested in said company.

That by the means aforesaid the said Missouri, Iowa and Nebraska Railway Company directly sold and disposed of said property for a term exceeding the time the tax immunity was, as is alleged, secured to it by the said decree.

That said decree was not intended to and could not exempt said property from taxation in the hands, ownership, or control of any person or corporation other than the said Missouri, Iowa and Nebraska Railway Company, to whom, if the same was valid and binding at all, it was personal, and could not extend to said property in the hands, ownership, or control of any other person or corporation.

That after the commencement of the said suit in which
353 said decree was entered, but long before said decree was made, said Missouri, Iowa and Nebraska Railway Company had so, as aforesaid, transferred and disposed of its said railroad and property to said Wabash, St. Louis and Pacific Railway Company, which said last-named company was at the time said decree was made and entered and had long been in possession and exclusive ownership and control under a title and for a term exceeding said supposed tax immunity, notwithstanding which said Wabash, St. Louis and Pacific Railway Company was not brought in or made a party to said suit, nor was it made to appear therein, nor was this court informed that such property had been so, as aforesaid, previously transferred and disposed of to said Wabash, St. Louis and Pacific Railway Company.

Said railroad and property remained in the use, management, and occupancy and control of said Wabash, St. Louis and Pacific Railway Company from and after the said 3rd day of September, 1880, down to the — day of August, 1885, at which time, in pur-

suance of the said decree of the court in the case of The Central Trust Company *vs.* The Wabash, St. Louis and Pacific Railway Company, dated June 9th, 1885, it was turned over to and remained in the possession of Thomas Thacher, receiver of the property and franchises of said Missouri, Iowa and Nebraska Railroad Company, up to the 19th day of August, 1886, at which time said property was sold by P. T. Lomax, master in chancery, as aforesaid. At no time since the said 3rd day of September, 1880, has said railroad or property or any part thereof been possessed, used, occupied, owned, or controlled by the said Missouri, Iowa and Nebraska Railway Company. Under the constitution and laws of the State of Missouri said property has at all times since said 3rd day of September, 1880, been subject to taxation in the hands of the said
354 Wabash, St. Louis and Pacific Railway Company up to said — day of August, 1885, and in the hands of said Thacher thereafterwards till the 19th day of August, 1886, and in the hands of the complainants thereafterwards hitherto, of all whereof the complainants had full notice at and before the purchase of the said property.

4th. These defendants, further answering, say that complainant herein is estopped and precluded from having said decree revived in its favor against these defendants, because they say that heretofore, to wit, on the 15th day of January, 1889, the said complainant exhibited its original bill in chancery in the United States circuit court for the northern division of the eastern district of Missouri against the defendants herein, setting up and claiming, among other things, that said proceedings and final decree in said cause of Secor and others against Singleton and others in this court was a final and conclusive adjudication against the rights of these and other defendants to levy and collect taxes against the said railroad property and the right of exemption and immunity therefrom then and now asserted to exist in favor of the complainants herein, and praying that these defendants be perpetually restrained and enjoined from directly or indirectly collecting or attempting to collect by any means whatever any of the taxes, interest, penalties, or costs alleged and claimed to be due therein upon any of the said property of the said complainant as aforesaid.

And thereupon these and other defendants therein made full answer to all and singular the statements and allegations in said bill contained; and afterwards, on the — day of May, 1889, at a regular term of said court, the issues being joined in said
355 cause, the same was duly tried and submitted to the court; and afterwards, to wit, on the 28th day of January, 1890, said court, being fully advised in the premises, fully adjudicated the said several matters and issues against the said complainant therein and herein, and made and entered in said court a final decree dismissing said complainant's bill and dissolving the restraining order theretofore made and entered therein restraining the said defendants from so levying or collecting taxes against said property.

That said decree is still in full force and effect, remaining of rec-

ord in said court, as by certified copy of the records and proceedings therein will fully and at large appear.

And these defendants say that by the filing of the said bill and the prosecution thereof to final decree the complainant is estopped to claim the said decree in the said case of Secor and others against Singleton and others as of binding force and effect in its favor against these defendants, and is estopped to now have or maintain this proceeding to revive the said decree in its favor.

5th. These defendants, further answering complainant's bill and amendment thereto, say that the said complainant since the purchase of the said railroad property has defended several suits brought by the State of Missouri at the relation and to the use of the collector of revenue of Scotland county—that is to say, one in the United States circuit court for the southern district of Iowa and another in the circuit court for the State of Missouri for Scotland county—wherein it made and set up certain supposed defenses without respect of the decree of the said cause of Secor and others against Singleton and others, and also pleading said decree by way of defense in said suits, although the same was for the recovery of certain
356 taxes, the collection of which was alleged by complainant to have been restrained and enjoined, so that these defendants now say that the complainants herein has acquiesced in the right of the said State of Missouri to have and maintain its action for all said taxes due upon or against the said property *notwithstanding* the said decree, and are now thereby and by their long and continued course of conduct in the premises estopped to set — or claim any right or protection to or by the said decree or to cause these defendants to be punished for contempt for any disobedience thereof.

6th. These defendants, further answering, say that the complainant herein was not a party to the said cause of Secor and other against Singleton and others, nor is it a privy of any kind of the parties therein, so as to entitle it to any relief herein or to have revived or continued to it any relief herein, or to have revived or continued to it any right or advantage secured by said decree to any of the parties therein.

7th. These defendants, further answering, aver the fact to be that under the constitution and laws of the State of Missouri the valuation and assessment of railroad property for the purpose of taxation is committed, not to the various revenue officers of the several counties in the State, but to certain officers of the State of Missouri; said constitution and laws require the president or other chief officer of every railroad in the State to furnish to the State auditor a duly verified statement setting out in detail the length of their respective roads, including leased roads, the length of side tracks, with depots, water tanks, &c., the number of engines, cars, and other movable property and other particulars, all as fully set forth by statute in such cases made and provided.

It is made the duty of the State auditor to certify to the
357 State board of assessment and equalization all returns made to him by such railroad or by the county clerk in cases of default on part of such railroad corporations; said State board of

assessment and equalization of railroad property is composed of the governor, secretary of state, State auditor, State treasurer, and attorney general, whose duty it is to assess, adjust, and equalize the valuation of railroad property in all the counties of the State for taxation.

It is made the duty of the State auditor to certify to the county courts of the proper counties the action of the said State board, setting forth the details of property and the valuation thereof as adjusted and assessed by said board.

Upon such valuation and assessment so made and returned the mere ministerial duty — levying and collecting the taxes of the various railroads is laid upon the county courts and collectors of the various counties.

The said officers of the State of Missouri composing the State board of assessment and equalization at the time of the commencement of the said suit by Secor and others against Singleton and others were not made parties thereto, nor were their successors in office or any succeeding board or the members thereof made parties defendant in said suit.

At the time of the commencement of the said suit John E. Walker was State auditor of Missouri, and was made, as such, a party defendant to the bill. Pending said suit said Walker was succeeded in office by Thomas Holliday, who made and filed his answer therein, which was by the complainants duly replied to; but, pending said bill and before decree entered therein, the same was, on motion of complainants, dismissed as to said defendant Thomas Holliday.

358 Neither the State auditor nor the State board of assessment and equalization of railroad property ever was restrained or enjoined from assessing the said railroad and property of the Missouri, Iowa and Nebraska Railway Company for taxation.

The valuations and assessments made by said board of assessment and equalization against the said railroad and property for every of the several years preceding and succeeding the year 1879 were lawfully made and constitute a valid and subsisting claim and lien in favor of the State of Missouri and against said railroad and property whereof, and of the laws of the State of Missouri and the constitution thereof complainant had due notice. Wherefore these defendants say the said decree ought not to be revived against them nor should they be restrained or otherwise interfered with in the duty of enforcing said lien in the manner provided by law, the said taxes so assessed never having been paid nor the said lien in any manner discharged.

8th. The said Missouri, Iowa and Nebraska Railway Company never was exempt from taxation upon said railroad and property, but the same has always been subject to taxation, whether in its hands, use, possession, or control or in the hands, use, possession, or control of others. The complainant herein purchased said property at public sale on decree of foreclosure of mortgage executed prior to the commencement of the said suit of Secor *et al. vs.* Single-

ton *et al.* and with full notice of the right of taxation in the State of Missouri against the same and of all processes and proceedings of the several State and county officers had, done, or performed or which might or should have been in and about the enforcement of such right of taxation, and purchased said property encumbered with the superior lien of the State for all taxes so assessed or which of right should have been.

359 9th. The said Missouri, Iowa and Nebraska Railway Company was a codefendant with the several counties and county officers in said bill of Secor *et al. vs.* Singleton and others, between whom and the said other several defendants therein, as among themselves — never were litigated, adjudged, or determined.

10th. These defendants deny each and every allegation in the complainant's bill and amendments thereto contained; without this, that any other matter, cause, or thing in said bill or amendments contained material or necessary to make answer unto and not hereby well and sufficiently answered, confessed, wavered, and avoided or denied is true to the knowledge and belief of these defendants.

All of which matters and things these defendants are willing to aver and maintain and prove as this honorable court shall direct.

And they pray hence to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

F. L. SCHOFIELD AND
T. L. MONTGOMERY,
Solicitors and of Counsel for Clark County and its Officers, who are Defendants.

UNITED STATES OF AMERICA, }
Eastern District of Missouri. }

We, J. E. Todd, Charles Seyb, and George Harter and O. S. Callihan, defendants in the above cause, being duly sworn, do say we have severally read or heard read the foregoing answer, and that the matters and things therein contained are true.

J. E. TODD.
CHAS. SEYB.
*H*EO. H. HARTER.
O. S. CALLIHAN.

360 Sworn to and subscribed before the undersigned, a notary public within and for the county of Clark, in said eastern district of Missouri, by the above-named J. E. Todd, Charles Seyb, George Harter, and O. S. Callihan, defendants, on this 21st day of June, 1890.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my official seal in said county the day aforesaid.
My term expires December 21, 1892.

D. E. KENNEDY,
Notary Public.

And afterwards, to wit, on the eighteenth day of July, A. D. 1890, the following further proceedings were had and appear of record in said cause, to wit:

(*Stipulation Filed.*)

CHARLES A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

Now come the parties herein, by their solicitors, and file stipulation that Keokuk & Western Railway Company may have until September rules, 1890, in which to file reply to respondents' answers or amend its bill of revivor, as it may be advised.

Said stipulation is in words and figures following, to wit:

(*Stipulation.*)

361 In Circuit Court United States, Eastern Div., East. Dist., Mo.

SECOR *et al.*
vs.
SINGLETON *et al.*

In the matter of bill of revivor of Keokuk & Western R. R.

It is hereby stipulated that revivor complainant, Keokuk & Western -way, have until September rules, 1890, in which to file reply to defendants' answer or amended bill of complaint as it may be advised.

F. T. HUGHES,
For Rev. Compl't.
JOHN C. MOORE,
For Scotland Co., Defendants.
F. L. SCOFIELD AND
T. L. MONTGOMERY,
Att'ys for Clark County and its Officers.

And afterwards, to wit, on the first day of September, A. D. 1890, there was filed in said cause a reply to answers in words and figures following, to wit:

(*Reply to Answers.*)

In the United States Circuit Court, Eastern Division, Eastern District of Missouri.

CHARLES A. SECOR and Others
against
JAMES K. SINGLETON and Others.

362 In the matter of a bill of revivor by the Keokuk & Western Railroad Company against above defendants filed on the — day of February, 1890.

The replication of the Keokuk & Western R. R. Co., complainant, to the separate answers of The County Court of Scotland County, Missouri, and its officers and The County Court of Clark County, Missouri, and its officers.

These replicants, saving and reserving unto themselves, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by the repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

H. S. PRIEST & F. T. HUGHES,
Complainants' Solicitors.

And afterwards, to wit, on the tenth day of January, A. D. 1891, the following further proceedings were had and appear of record in said cause, to wit:

363 (*Final Decree.*)

CHAS. A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

This cause came on to be heard at this term upon the supplemental bill in the nature of a bill of revivor of the Keokuk and Western Railroad Company, the answers thereto, and the replications to said answers and proofs filed in said cause, and was argued by counsel and submitted; upon consideration whereof, and being fully advised in the premises, the court doth consider, adjudge, and

decree that complainant in said supplemental bill is without right or equity to have the original decree in favor of Charles A. Secor *et al.* revived in its favor and in its name; wherefore it is ordered—

First. That said supplemental bill in the nature of a bill of revivor be, and the same is hereby, dismissed.

Second. That the costs herein incurred be taxed against said Keokuk and Western Railroad Company, and that a fee bill or execution issue therefor.

And afterwards, to wit, on the twelfth day of January, A. D. 1891, the following further proceedings were had and appear of record in said cause, to wit:

(*Appeal Allowed.*)

CHAS. A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

Now comes the Keokuk and Western Railroad Company,
364 by its solicitors, on whose motion it is ordered that an appeal from the decree of this court in this cause to the Supreme Court of the United States be allowed upon said Keokuk and Western Railroad Company giving bond in the penal sum of five hundred dollars, to be approved by the court or one of the judges thereof.

And afterwards, to wit, on the seventh day of March, A. D. 1891, the following further proceedings were had and appear of record in said cause, to wit:

(*Appeal Bond Approved.*)

CHAS. A. SECOR *et al.*, Complainants,
vs.
JAMES K. SINGLETON *et al.*, Defendants. } 1505.

Now comes the Keokuk & Western Railroad Company, by its solicitors, and presents to the court its appeal bond in the penal sum of five hundred dollars, which is approved by the court and ordered to be filed and made part of the record herein.

It is further ordered that the clerk of this court make out and certify to the Supreme Court of the United States a full and complete transcript of the record and proceedings in this cause.

Said appeal bond is in words and figures following, to wit:

In the *Supreme* Court of the United States, Eastern Division, Eastern District of the State of Missouri.

365 CHARLES A. SECOR *et al.*, Complainant-, *vs.* JAMES K. SINGLETON *et al.*, Defendants. } In Chancery.

In the matter of the bill of revivor by the Keokuk & Western Railroad Company.

Appeal Bond.

Know all men by these presents that we, The Keokuk & Western Railroad Company and J. H. Million and H. M. Hiller, of Clark county, Missouri, are held and firmly bound unto the County Court of Scotland County, Missouri; Benjamin F. Bourn, as collector of revenue of said county; The County Court of Schuyler County and N. T. Roberts, collector of revenue thereof, and also unto The County Court of Clark County, Missouri; Otho S. Callahan, as collector of revenue thereof, their successors, executors, or administrators, in the penal sum of five hundred dollars; to the payment of which, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this — day of ——, 1891.

Whereas the above-named Keokuk and Western Railroad Company hath taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the circuit court of the United States for the eastern division of the eastern district of Missouri: Now, therefore, the condition of this obligation is such that if the above-named Keokuk & Western Railroad Company shall prosecute its said appeal with effect and answer for all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

366 In witness whereof the said Keokuk & Western Railroad Company has caused its name to be signed in its presence by its president, F. T. Hughes, and the corporate seal thereof to be attached and attested by its secretary, J. F. Elder, [SEAL.] and the said other parties have signed and sealed the same.

KEOKUK & WESTERN RAILROAD COMPANY,
By F. T. HUGHES, *President.*

Attest: J. F. ELDER, *Sec'ty.*

H. M. HILLER. [SEAL.]
JOSEPH H. MILLION. [SEAL.]

Witness:
CHAS. HILLER.

STATE OF MISSOURI, } ss:
County of Clark, }

We, J. H. Million and H. M. Hiller, the above-named persons who signed the foregoing bond as parties thereto, each for himself states on his oath that he is worth the sum of $1,000 over and above all exemptions and liabilities.

H. M. HILLER.
J. H. MILLION.

Subscribed and sworn to before me, the undersigned, a notary public within and for the county of Clark and State of Missouri, Feb'y 3, 1891. My commission expires Oct. 10, 1894.

CHARLES HILLER,
[SEAL.] *Notary Public.*

Approved by—
AMOS M. THAYER,
U. S. Dist. Judge.

March 7th, 1891.

367 In the Circuit Court of the United States, Southern District of Iowa, Eastern Division.

FARMERS' LOAN & TRUST COMPANY, Complainant,
vs.
THE MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY, THE Mercantile Trust Company, Wabash, St. Louis & Pacific Railway Company, and The Humeston & Shenandoah Railroad Company, Defendants.

Decree Confirming Sale.

This day comes Morris K. Jesup and Henry C. Thatcher and show to the court that on the 19th day of August, 1886, they became and were then purchasers of all the mortgaged property and premises and franchises of the defendants decreed to be sold herein and sold by P. Y. Lomax, Esq., on said day, as master of chancery appointed by former — of this court herein to make said sale; that they purchase- said property and franchises in trust and as a committee for certain bondholders.

And it further appears to the court that the said master on the 20th day of August, 1886, filed herein his report of said sale and proceedings thereon, and the court, having examined the same, doth find that the said master has in every respect proceeded in due form of law and in accordance with the terms of said decree, and that said sale was fairly made, and that said Morris K. Jesup and Henry C. Thatcher, the said purchasers, paid the said master the sum of three hundred and twenty-five thousand dollars in cash and receivers' certificates on the day of said sale, according to the terms and

conditions of said decree, and no objections or exceptions
368 being made by any of the parties herein to the confirmation of said sale, and the court, having — fully advised in the premises, and on motion of said Morris K. Jesup and Henry C. Thatcher, doth—

Order and decree that the proceedings, sale, and report of said master be, and the same are hereby, approved and confirmed, except the costs, which are hereafter to be taxed; and it is further ordered that the said master execute and deliver to the said Morris K. Jesup and Henry C. Thatcher, as such purchasing committee, proper conveyances of the railway property so sold and in the form of deed drafted by the said master and filed within with his report of Sept. 6th, 1886, upon the payment to said master of the balance of said purchase-money, in cash or in receiver's certificates aforesaid, or in the bonds and coupons of June 1st, 1870, secured by the mortgage mentioned in said decree, which bonds and coupons shall be received and accepted in payment of said balance to the extent and for the amount which the holders thereof would be entitled to receive in the distribution of the proceeds of said sale, as in said decree provided.

All matters reserved in the original decree are reserved for future consideration, and all questions as to the right of the holders of the 14 outstanding bonds claimed by O. C. Du Souchet to participate in the purchase are also so reserved, and the court retains jurisdiction of the property and cause for such purposes.

[Endorsed:] Farmers' Loan & Trust Co. *vs.* W., I. & N. *et al.* Confirmation of sale to Jesup & Thacher.

369 *Master's Deed.*

This indenture, made this twenty-fourth day of November, A. D. one thousand eight hundred and eighty-six, by and between P. T. Lomax, standing master in chancery of the circuit court of the United States for the southern district of Iowa, party of the first part, and Morris K. Jesup and Henry C. Thacher, a committee duly constituted by and for certain bondholders, party of the second part, witnesseth:

That whereas, by decree of the circuit court of the United States in and for the district of Iowa, dated October 22nd, 1880, in a certain suit therein pending wherein The Farmers' Loan & Trust Company, trustee, was complainant, and The Missouri, Iowa & Nebraska Railway Company and others were defendants, in equity, on original bill, and Lee, Higginson & Company were cross-complainants, and the said Missouri, Iowa & Nebraska Railway Company and the said Farmers' Loan & Trust Company and others were cross-defendants on cross-bill, and also by decree of the circuit court of the United States for the southern district of Iowa and eastern division thereof, dated July 8th, 1886, in certain proceedings supplementary to the suit aforesaid, therein pending, wherein the said Farmers' Loan & Trust Company, trustee, was complainant and the said Mis-

souri, Iowa & Nebraska Railway Company, The Mercantile Trust Company, The Wabash, St. Louis & Pacific Railway Company, and The Humeston and Shenandoah Railroad Company were defendants, the said standing master was ordered to advertise and sell at public auction the mortgaged property hereinafter more particularly described and included in two separate mortgages executed by the Missouri, Iowa & Nebraska Railway Company to the Farmers' Loan & Trust Company, trustee, one bearing date the 1st day of June, 1870, and the other bearing date the 6th day of January, 1879, the latter being in the nature of a mortgage of further assurance in the event that the said railway company, mortgagor, should fail to pay within five days from the date of said last-named decree the sum of two million five hundred and ninety-two thousand dollars and sixty cents, and the further sum of thirty-eight thousand five hundred and twenty-four dollars and ninety cents, with the interest and costs provided in said decree; and

Whereas the said railway company failed to pay the sums of money aforesaid within the period so ordered; and

Whereas by said decree the said master was directed to give notice of the time and place of such sale, containing a brief description of the property to be sold, by advertising the same in the Daily Gate City, a newspaper published at Keokuk, in the State of Iowa, and in the Commercial and Financial Chronicle, a newspaper published in the city of New York, in the State of New York, once a week for four successive weeks, the last one of said insertions to be at least ten and not more than twenty days before such day of sale, which was by said decree directed to be made at the front door of the building in which the United States courts are held in the city of Keokuk, in the State of Iowa; and

370 Whereas notice of said sale was duly advertised and said sale was duly made at the time and place and was in all respects made as directed by said decree; and

Whereas at said sale Morris K. Jesup and Henry C. Thacher, committee as aforesaid, bid for said property the sum of six hundred thousand dollars, and, that being the only bid for said property, the same was struck off *as* the purchasers thereof, and the said Morris K. Jesup and Henry C. Thacher, committee as aforesaid and the purchasers *of* said sale, did, on the day of sale, deliver to said master a certificate of deposit of the Metropolitan Trust Company of the City of New York for the sum of three hundred and twenty-five thousand dollars, payable in cash or in receiver'*y* certificates to the said master, which was by him received as the cash payment required by the terms and provisions of said decree; and

Whereas by said decree the master was further ordered at and upon the making of said sale to make and execute a proper and suitable deed or deeds or instruments of conveyance for the said mortgaged premises and property to the purchaser or purchasers at the said sale, and forthwith to report to said court, if in session, the said sale for approval and confirmation; and *whe*

Whereas this deed of conveyance to the said party of the second part, together with the master's report of said sale, has been pre-

sented to said court, then being in session, and by it both have been duly approved and confirmed:

Now, therefore, in obedience to said decree of July eighth, eighteen — eighty-six, and in consideration of the premises and of the said sum of six hundred thousand dollars paid in the mode and manner provided by the terms of said decree, and receipt whereof is hereby acknowledged, the said party of the first part has granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, and convey, unto the said party of the second part, their successors and assigns, all the property and franchises described and conveyed in and by the mortgages hereinbefore mentioned, being all of the property and franchises of the said Missouri, Iowa & Nebraska Railway Company, owned by and belonging to the said railway company at the respective dates of said mortgages or thereafter acquired by it, including, among other things, the following, to wit: All and singular the pieces or parcels of land, situated, lying, and being in the States of Missouri and Iowa, extending from the city of Keokuk, in the State of Iowa, in and through the county of Lee, in said State, and the counties of Clark, Scotland, & Schuyler, in the State of Missouri, and the counties of Appanoose, Wayne, and Decatur, in the State of Iowa, to the town of Van Wert, in said last-named county and State, and all and singular the railroad surveyed and constructed from and to the termini aforesaid lying and being in the States aforesaid, together with all and singular the right of way for said railroad, as well as all other privileges and franchises belonging to said railway company, including its road-bed, gradings, embankments, excavation, sidings, culverts, bridges, cross-ties, superstructures, track or tracks, iron rails, fences, stations and station-houses, depot grounds, and one-half interest in the superstructure and approaches thereto of the railroad and wagon bridge spanning the Des Moines river at
371 a point known as Buena Vista, together with the right of use of the substruction of said bridge, and all the work, material, and operations for the construction of said railroad at any time made, done, or acquired by said railway company and which in anywise appurtains or shall appurtain to said railroad, and all and singular the buildings, machine shops, engine-houses, depots, turnouts, wood and water stations, water tanks, and all other buildings or structures, improvements and constructions, of every nature and description, together with all and singular the alienable franchises, emoluments, income and davantages, tenements, and hereditiments and appurtenances, and all and singular the equipment and furniture, motive power, rolling stock, engines, tenders, cars, carriages, tools, fixtures, and machinery of every kind, nature, and description, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all lands and real estate to which the said railway company may be entitled by reason of the construction of said railroad, and all the estate, right, title, and interest, property, and possessions, in law or in equity, of the said railway company, together with all and singular the rights, privileges, corporate property, and franchises of the said railway company, each and every part and

parcel hereof, and all the appurtenances to the above-described premises belonging or in anywise appurtaining.

In witness whereof the said master in chancery, as aforesaid, party of the first part, has hereto set his hand and seal the day and year first above written.

P. T. LOMAX, [SEAL.]
Standing Master in Chancery, U. S. C. C., S. D. of Iowa.

STATE OF IOWA, } ss:
Lee County, }

Be it remembered that on this third day of December, A. D. 1886, before me, *me* C. A. Leech, notary public in and for said county, personally appeared P. T. Lomax, standing master in chancery of the circuit court of the United States in and for the southern district of Iowa, who was personally known to me to be the identical person whose name is affixed to the foregoing deed as grantor, and acknowledged the same to be his voluntary act and deed for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and affixed my seal notarial this day and date above written.

C. A. LEECH,
[SEAL.] *Notary Public.*

STATE OF IOWA, } ss:
Lee County, }

On this third day of December, A. D. 1886, before me personally appeared P. T. Lomax, standing master in chancery of the circuit court of the United States in and for the southern district of Iowa, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

372 In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

C. A. LEECH,
Notary Public.

STATE OF MISSOURI, } ss:
County of Schuyler, }

IN THE RECORDER'S OFFICE.

I, D. N. Jewett, clerk of the circuit court and *ex officio* recorder of said county, do hereby certify that the within instrument of writing was, on the 28th day of December, A. D. 1886, duly filed for record in this office at 1 o'clock 40 minutes a. m., and is recorded in the records of this office, in Book 27, at page 591.

In witness whereof I have hereunto set my hand and affixed my official seal, at Lancaster, this 28th day of December, 1886.

[SEAL.] D. N. JEWETT, *Recorder,*
By E. H. ROBERTS, *Deputy.*

STATE OF MISSOURI, } ss:
County of Clark, }

I, I. C. Weaver, recorder of said county, do hereby certify that the within instrument of writing, with the certificates thereon, was, on the first day of January, A. D. 1887, at 10 o'clock a. m., duly filed for record in this office, and is recorded in the records of this office, in Book 42, at page 54.

In witness whereof I have hereunto set my hand and affixed my official seal at office, in Kahoka, this first day of January, A. D. 1887.

I. C. WEAVER, *Recorder.*

STATE OF MISSOURI, } ss:
County of Scotland, }

IN THE RECORDER'S OFFICE.

I, C. F. Saunders, circuit clerk and *ex officio* recorder of said county, do hereby certify that the within instrument of writing, with the certificates thereon, was, on the 29th day of December, A. D. 1886, at 1 o'clock p. m., duly filed for record in this office, and is recorded in the records of this office, in Book 28, at page 545.

In witness whereof I have hereunto set my hand and affixed my official seal, at Memphis, this 30th day of December, A. D. 1886.

[SEAL.] C. F. SAUNDERS, *Recorder.*

STATE OF IOWA, } ss:
Decatur County, }

RECORDER'S OFFICE, DECATUR COUNTY, IOWA.

I, C. W. Beck, recorder in and for said county, do hereby certify that the within instrument of writing, with the certificates thereon, was, on the 23rd day of March, A. D. 1887, at 4 o'clock p. m., duly filed for record in this office, and is duly recorded in Book
373 39, pages 51 to 54, of the records of this office.

C. W. BECK,
Recorder of Decatur Co., Iowa.

[Endorsed:] Lomax, master, to Jesup & Thacher. Master's deed to M., I. & N. property at foreclosure sale.

374 This indenture, made this twenty-sixth day of November, A. D. one thousand eight hundred and eighty-six (1886), by and between Morris K. Jesup and Henry C. Thacher, as trustees, being a committee duly constituted by and acting for the first-mortgage bondholders of the Missouri, Iowa & Nebraska Railway Company, hereinafter called the parties of the first part, and the Keokuk and Western Railroad Company, a corporation duly created by and existing under the laws of the State of Iowa, hereinafter called the party of the second part:

Whereas, by a decree of the circuit court of the United States in and for the district of Iowa, dated October 22nd, 1880, in a certain suit therein pending, wherein The Farmers' Loan & Trust Company;

trustee, was complainant and the said Missouri, Iowa and Nebraska Railway Company and others were defendants, in equity, on original bill and Lee, Higginson and Company were cross-complainants and the said Missouri, Iowa and Nebraska Railway Company and the said The Farmers' Loan and Trust Company and others were cross-defendants on cross-bill, and also by decree of the circuit court of the United States for the southern district of Iowa, eastern division thereof, dated July 9th, 1886, in certain proceedings supplementary to the suit aforesaid therein pending, wherein the said The Farmers' Loan and Trust Company, trustee, was complainant and the said Missouri, Iowa and Nebraska Railway Company, The Mercantile Trust Company, The Wabash, St. Louis and Pacific Railway Company, and Humeston and Shenandoah Railroad Company were defendants, a sale of the property hereinafter particularly described and included in two separate mortgages executed by the said Missouri, Iowa and Nebraska Railway Company to the said The Farmers' Loan and Trust Company, trustee, one bearing date the first day of June, A. D. 1870, and the other bearing date the eighth day of January, A. D. 1879, was ordered and directed to be made in the event of said mortgagor in said mortgages failing or neglecting to pay the several sums of money in said decree specially set forth and contained;

And whereas the said Missouri, Iowa and Nebraska Railway Company failed to pay the said sums of money as directed by said decree, by force and virtue whereof a sale of said premises was held on the nin-teenth day of August, A. D. 1886, when and where the same was purchased by the said Morris K. Jesup and Henry C. Thacher, trustees and committee as aforesaid;

And whereas, by virtue of said purchase, a deed or conveyance of said property so sold and purchased as aforesaid was duly made, executed, and delivered to said Morris K. Jesup and Henry C. Thacher, as trustees and committee aforesaid, bearing date the twenty-fourth day of November, A. D. 1886, in fulfilment and pursuance of the terms of the decrees hereinaforesaid referred —;

Now, this indenture witnesseth that the said Morris K. Jesup and Henry C. Thacher, as trustees and committee aforesaid, for and in consideration of the sum of one dollar, lawful money of the United States of America, unto them in hand well and truly paid at and before the sealing and delivery of these presents, the receipt
375 whereof is hereby acknowledged, as well for and in consideration of divers good and valuable considerations them thereunto specially moving, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said Keokuk and Western Railroad Company, its successors and assigns—

All the property and franchises described and conveyed in and by the mortgages hereinbefore mentioned, being all the property and franchises of the Missouri, Iowa and Nebraska Railway Company owned by and belonging to said railway company at the respective dates of said mortgages or thereafter acquired by it, including, among other things, the following, to wit: All and singular the

pieces or parcels of land situated, lying, and being in the State- of Missouri and Iowa, extending from the city of Keokuk, in the State of Iowa, in and through the county of Lee, in said State, and the counties of Clark, Scotland, and Schuyler, in the State of Missouri, and the counties of Appanoose, Wayne, and Decatur, in the State of Iowa, to the town of Van Wert, in said last-named county and State, and all and singular the railroad surveyed and constructed from and to the termini aforesaid, lying and being in the State aforesaid, together with all and singular the right of way for said railroad, as well as all other privileges and franchises belonging to said railway company, including its road-bed, gradings, embankments, excavations, sidings, culverts, bridges, cross-ties, superstructures, track and tracks, iron rails, fences, stations and station-houses, depot grounds, one-half interest in the superstructure and approaches thereto of the railroad and wagon bridge spanning the Des Moines river at a point known as Buena Vista, together with the right of use of the substruction of said bridge and all the work, materials, and operations for the construction of said railway company and which in anywise pertains or shall appertain to said railroad, and all and singular the buildings, machine shops, engine-houses, depots, turnouts, wood and water stations, water tanks, and all other buildings or structures, improvements, and constructions of every nature and description, together with all and singular the alienable franchises, emoluments, income, and advantages, tenements, and hereditaments and appurtenances, and all and singular the equipment and furniture, motive power, rolling stock, engines, tenders, cars, carriages, tools, fixtures, and machinery of every kind, nature, and description, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all lands and real estate to which the said railway company may at any time be or have been entitled to by reason of the construction of said railroad, and all the estate, right, title and interest, property, and possession, in law or in equity, of the said railway company, together with all and singular the rights, privileges, corporate property, and franchises of said railway company, each and every part and parcel thereof, and all the appurtenances to the above-described premises belonging or in anywise appurtaining:

376 To have and to hold the said premises, hereditaments, and appurtenances hereby granted or mentioned or intended so to be unto the said The Keokuk & Western Railroad Company, its successors and assigns, to and for the only proper use, benefit, and behoof of the said Keokuk & Western Railroad Company, its successors and assigns forever.

Under and subject, however, to the express stipulation, covenant, and condition that the said Keokuk and Western Railroad Company shall and will at all times hereafter forever save, indemnify, and keep harmless the said Morris K. Jesup and Henry C. Thacher, trustees and committee as aforesaid, their and each and every of their heirs, executors, administrators, and assigns, of and for any and all loss, damage, injury, or other liability which they or either of them may sustain or suffer for or on account or growing out of

their appointment as trustees and committee or their management of said trust, as well from any act, matter, or thing of whatsoever nature or kind the same may be done, performed, or suffered by them or either of them in connection with said trust estate or property or springing thereout, whether the same be by sale, transfer, and conveyance or otherwise howsoever.

In witness whereof the said Morris K. Jesup and Henry C. Thacher, as trustees and committee aforesaid, have hereunto interchangeably set their hands and seals the day and year first hereinbefore written.

MORRIS K. JESUP. [s. s.]
HENRY C. THACHER. [s. s.]

Signed, sealed, and delivered in the presence of us—
JNO. A. HILLERY,
As to M. K. J.
BENJ. STRONG,
As to M. K. J.
SAM'L JENNISON,
— to H. C. T.

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this twenty-ninth day of November, A. D. 1886, before me, Jno. A. Hillery, a commissioner for the State of Missouri and commissioner for the State of Iowa in New York, personally appeared Morris K. Jesup, one of the trustees and committee hereinabove set forth, who is personally known to me to be the identical person whose name is affixed to the foregoing deed as one of the grantors therein, and acknowledged the same to be his voluntary act and deed and that of his constituents for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[SEAL.] JOHN A. HILLERY,
A Commissioner for the State of Missouri and Commissioner for the State of Iowa, at 56 Wall Street, in the City and County of New York.

377 STATE OF MASSACHUSETTS, } ss:
County of Suffolk, }

Be it remembered that on this twenty-sixth day of November, A. D. 1886, before me, Sam'l Jennison, a commissioner of the State of Iowa, residing in Boston, and a notary public, personally appeared Henry C. Thacher, one of the trustees and committee hereinabove set forth, who is personally known to me to be the identical person whose name is affixed to the foregoing deed as one of the grantors therein, and acknowledged the same to be his voluntary act and deed and that of his constituents for the uses and purposes therein expressed.

In witnsss whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

SAMUEL JENNISON,
[SEAL.] *Commissioner for Iowa & Notary Public in Boston.*

STATE OF MASSACHUSETTS, } ss:
County of Suffolk, }

Be it remembered that on this twenty-sixth day of November, A. D. 1886, before me, Samuel Jennison, a commissioner of the State of Missouri to take acknowledgement of deed-, etc., for said State, residing in Boston, and a notary public, personally appeared Henry C. Thacher, one of the trustees and committe- hereinabove set forth, who is personally known to me to be the identical person whose name is affixed to the foregoing deed as one of the grantors therein, and acknowledged the same to be his voluntary act and deed and that of his constituents for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

SAMUEL JENNISON,
[SEAL.] *Commissioner for Missouri and*
Notary Public in Boston.

378 STATE OF MISSOURI, } ss:
County of Schuyler, }

IN OFFICE OF THE CIRCUIT CLERK
AND RECORDER OF DEEDS.

I, D. N. Jewett, clerk of the circuit court and *ex officio* recorder of deeds within and for the county aforesaid, do certify that the instrument of writing hereto attached, with the certificates thereon, was filed for record in said office on the 28th day of Dec., 1886, at 9 o'clock and 50 minutes a. m., and that the same is duly recorded in said office in Book 27 for recording deeds, &c., at page 596.

In witness whereof I have hereto set my hand and affixed the seal of said court. Done at office, at Lancaster, this 28th day of Dec., 1886.

D. N. JEWETT,
[SEAL.] *Clerk of the Circuit Court and ex Officio Recorder,*
By E. H. ROBERTS, *Deputy.*

STATE OF MISSOURI, } ss:
County of Scotland, }

IN THE RECORDER'S OFFICE.

I, C. F. Sanders, circuit clerk and *ex officio* recorder of said county, do hereby certify that the within instrument of writing, with the certificates thereon, was, on the 19th day of Dec., A. D., 1886, at 1 o'clock and 10 minutes p. m., duly filed for record in this office, and is recorded in the records of this office, in Book 28, at page 548.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed my official seal, at Memphis, this 30th day of December, A. D. 1886.

C. F. SANDERS, *Recorder*,
Per —— ——, *Deputy*.

STATE OF MISSOURI, } ss:
County of Clark, }

IN THE RECORDER'S OFFICE.

I, I. C. Weaver, recorder of said county, do hereby certify that the within instrument of writing, with the certificate- thereon, was, on the 1st day of January, A. D. 1887, at 10 o'clock and — minutes a. m., duly filed for record in this office, and is recorded in the records of this office, in Book 42, page 59.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed my official seal, at office, in Kahoka, this 1st day of January, A. D. 1887.

I. C. WEAVER, *Recorder*.

379 STATE OF IOWA, } ss:
Decatur County, }

RECORDER'S OFFICE OF DECATUR COUNTY, IOWA.

I, C. W. Beck, recorder in and for said county, do hereby certify that the within instrument of writing, with the certificates thereon, was, on the 23rd day of March, A. D. 1887, at 4 o'clock p. m., duly filed for record in this office and duly recorded in Book 59, pages 557–'60, of the record- of this office.

C. W. BECK,
Recorder of Deeds, Decatur Co., Ia.

STATE OF IOWA, } ss:
County of Appanoose, }

IN RECORDER'S OFFICE.

—, K. J. Flemming, recorder of said county, do hereby certify that the within instrument of writing, with the certificates thereon, was, on the second day of March, A. D. 1887, at 8 o'clock a. m., duly filed for record in this office, and is recorded in the records of this office, in Book 34, page 424.

In witness whereof I have hereunto set my hand and affixed my official seal, at office, in Centerville, this 5th day of March, A. D. 1887.

L. J. FLEMMING,
Recorder of Deeds for County Aforesaid.

[Endorsed:] Jesup & Thacher, purchasing committee, to Keokuk & Western R. R. Co. Deed.

380 Whereas, on the 19th day of August, A. D. 1886, under a decree entered in the United States circuit court for the southern district of Iowa, all the property, rights, and franchises of the

Missouri, Iowa & Nebraska Railway Company were sold to Morris K. Jesup and Henry C. Thacher;

And whereas said purchase by the said Jesup and the said Thacher was made for the benefit and on behalf of the holders of the Iowa division of the Wabash, St. Louis and Pacific Railway Company's bonds, secured by a certain mortgage made by the Missouri, Iowa & Nebraska Railroad Company to the Mercantile Trust Company of the City and State of New York;

And whereas said sale was duly confirmed by the United States circuit court for the southern district of Iowa, and the deed for said property, rights, and franchises acquired at said sale was duly made to said Jesup and the said Thacher;

And whereas the said Jesup and the said Thacher, by an indenture *newly* made and delivered on the 26th day of November, 1886, conveyed the said property, rights, and franchises acquired as aforesaid to the Keokuk & Western Railroad Company;

And whereas it has become necessary for the said Jesup and the said Thacher to make an additional deed or deeds to the said Keokuk & Western Railroad Company in such form and for such purpose as has been or may be *by* advised by counsel learned in the law;

And whereas the said Jesup is about departing for Europe and will be unable to execute such conveyance in person:

Now, know all men by these presents that we, Morris K. Jesup and Maria V. A. Jesup, his wife, of the city and State of New York, do make, constitute, and appoint Thomas De Witt Cuyler, of Philadelphia and State of Pennsylvania, our true and lawful attorney in and for the purpose above set forth, expressly authorizing the said Cuyler to execute such deed or deeds as counsel learned in the law may advise him shall be necessary to confirm in the Keokuk & Western Railroad Company all the right, title, and interest acquired by us under the said sale recited, hereby ratify and confirming all that our said attorney may do in this behalf with the same force and effect as if we ourself were present and acting in person.

In witness whereof we have placed our hands and seals hereto this the second day of April, A. D. 1890.

MORRIS K. JESUP. [s. s.]
MARIA V. A. JESUP. [s. s.]

Witness:
J. M. FRENCH,
BENJ. STRONG.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

On this second day of April, A. D. 1890, before me, the subscriber, J. M. French, a notary public for the Commonwealth of New York, duly commissioned and qualified, personally came Morris K. Jesup and Maria V. A., his wife, to me personally known to be the identical persons whose names are fixed to the above deed as
381 grantors, and acknowledged the execution of the same to be their voluntary act and deed.

In testimony whereof I have hereunto set my hand and official seal the day and year above written.

[SEAL.] J. M. FRENCH,
Notary Public, Kings County

Ctf. filed in *in* New York county.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Edward F. Reilly, clerk of the city & county of New York, and also clerk of the supreme court for the said city & county, the same being a court of record, do hereby certify that J. M. French has filed in the clerk's office of the county of New York a certified copy of his appointment as notary public for the county of Kings, with his autograph signature, and was at the time of taking the proof or acknowledgment of the annexed instrument duly authorized to take same; and, further, that I am well acquainted with the handwriting of such notary, and verily believe the signature to the said certificate of proof or acknowledgement to be genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the second day of April, 1890.

EDWARD F. REILLY, *Clerk.*

STATE OF NEW YORK, }
County of New York, } *ss:*

Be it remembered that on this second day of April, A. D. 1890, before me, the undersigned, a notary public for the Commonwealth of New York, located in the city, county, and State of New York, duly commissioned and qualified, at the county aforesaid, personally came Morris K. Jesup and Maria V. A., his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned; and she, the said Maria V. A. Jesup, wife of said Morris K. Jesup, having been by me first made acquainted with the contents of said instrument, acknowledged, upon an examination separate and apart from her said husband, that she executed said instrument and relinquished her dower in the real estate therein conveyed freely and without compulsion or undue influence on the part of her said husband.

In testimony whereof I do hereto set my hand and affix my official seal the day and year last above written.

J. M. FRENCH,
Notary Public, Kings Co.

Ctf. filed in New York Co.

[Endorsed:] Jesup & wife to Cuyler. Power of attorney to convey.

382 This indenture, made this 19th day of April, A. D. 1890, by and between the Mercantile Trust Company of New York,

trustee, party of the first part, and Henry C. Thacher and Morris K. Jesup, parties of the second part, witnesseth:

That whereas, by decree of the circuit court of the United States in and for the southern district of Iowa, dated October 22nd, 1880, in a certain suit therein pending, wherein The Farmers' Loan & Trust Company, trustee, was complainant and The Missouri, Iowa & Nebraska Railway Company and others — defendants, in equity, on original bill, and Lee, Higginson & Co. were cross-complainants and the said Missouri, Iowa & Nebraska Railway Company and the said Farmers' Loan & Trust Company and others were cross-defendants on cross-bill, and also by decree of the circuit court of the United States for the southern district of Iowa and eastern division thereof, dated July 8th, 1886, in certain proceedings supplementary to the suit aforesaid therein pending, wherein The Farmers' Loan & Trust Company, trustee, was complainant and the said Missouri, Iowa & Nebraska Railway Company, The Mercantile Trust Company of New York, The Wabash, St. Louis & Pacific Railway Company, and The Humeston & Shenandoah Railroad Company *was* defendants, the standing master of said court was ordered to advertise and sell at public auction the mortgaged property hereinafter more particularly described and included in the three separate mortgages executed by the Missouri, Iowa & Nebraska Railway Company and by said decrees foreclosed—that is to say, one bearing date the first day of June, 1870, and one bearing date the sixth day of January, 1879, both to the Farmers' Loan & Trust Company, trustee, and one bearing date March 1st, 1881, to the Mercantile Trust Company of New York, trustee. The said standing master was ordered to execute said decree in the event that the said Missouri, Iowa & Nebraska Railway Company, mortgagor, should fail to pay within five days from the date of the said last-named decree the sum of two million five hundred and ninety-two thousand dollars and sixty cents, and the further sum of thirty-eight thousand five hundred and twenty-four dollars and ninety cents, with interest and costs provided in said decree; and

Whereas the said railway company did fail to pay the sums of money aforesaid within the period so ordered; and

Whereas one P. T. Lomax, then standing master of the said court, and in pursuance of said decrees, did, in the city of Keokuk, in the State of Iowa, on the 19th day of August, 1886, duly offer for sale and did sell the property, franchises, and appurtenances hereinafter described to Henry C. Thacher and Morris K. Jesup, a purchasing committee for the holders of the bonds foreclosed as aforesaid, for the sum of six hundred thousand dollars; and

Whereas said circuit court of the United States did thereafter, on and subsequently to the said 19th day of August, 1886, duly confirm the said sale, and in conformity to said order of confirmation said P. T. Lomax did, as master aforesaid, duly make, execute, and deliver his deed to said purchasing committee; and

Whereas the said decree of foreclosure did further provide as follows: That defendants The Missouri, Iowa & Nebraska
383 Railway Company, The Humeston & Shenandoah Rail-

road Company, and The Mercantile Trust Company shall each make, execute, and deliver to the purchaser or purchasers at the said sale, when the said sale shall have been approved and confirmed by the court, proper and suitable deeds or instruments of conveyance of the said mortgaged premises and property, conveying to the said purchaser or purchasers all the right, title, and interest of the said defendants of, in, and to the mortgaged premises and every part and parcel thereof; and whereas said standing master did make and execute his deed of conveyance to said purchasers in a certain form, and, together with his report of sale, duly present said form of conveyance and report to said court while in session, and both having been duly approved and confirmed:

Now, therefore, in consideration of the premises and in conformity to the provisions of said decrees, and in further consideration of one dollar in hand paid, the receipt of which is hereby acknowledged, the said Mercantile Trust Company of New York has granted, bargained, sold, and conveyed, and does by these presents grant, bargain, sell, and convey, unto Henry C. Thacher and Morris K. Jessup, the servivors or survivor of them and their or his successors and assigns, as such purchasing committee, and in trust for the parties interested therein, all its right, title, and interest as mortgagor in said mortgages in and to the following property, to wit:

All the property and franchises described and conveyed in and by the mortgages hereinbefore mentioned, being all the property and franchises of the said Missouri, Iowa & Nebraska Railway Company owned by and belonging to the said railway company at the respective dates of said mortgages or thereafter acquired by it, including, among other things, the following, to wit:

All and singular the pieces or parcels of land, situated, lying, and being in the States of Missouri and Iowa, extending from the city of Keokuk, in the State of Iowa, in and through the county of Lee, in said State, and the counties of Clark, Scotland, and Schuyler, in the State of Missouri, and the counties of Appanoose, Wayne, and Decatur, in the State of Iowa, to the town of Van Wert, in said last-named county and State, and all and singular the railroad surveyed and constructed from and to the termini aforesaid, lying and being in the States aforesaid, together with all and singular the right of way for said railroad, as well as all other privileges and franchises belonging to said railway company, including its road-bed, grading, embankments, excavations, sidings, culverts, bridges, cross-ties, superstructures, track or tracks, iron rails, fences, stations, and station-houses, depot grounds, and one-half interest in the superstructure and approaches thereto of the railroad and wagon bridge spanning the Des Moines river at a point known as Buena Vista, together with the right of use of the substructure of said bridge, and all the work, material, and operations for the construction of said railroad at any time made, done, or acquired by said railway company and which in anywise appertains or shall appertain to said railway, and all and singular the buildings, machine shops, engine-houses, depots, turnouts, wood and

water stations, water tanks, and all other buildings or struct-
384 ures, improvements, and constructions of every nature and description, together with all and singular the alienable franchises, emoluments, income and advantages, tenements, hereditaments, and appurtenances and all and singular the equipments and furniture, motive power, rolling stock, engines, tenders, cars, carriages, tools, fixtures, and machinery of every kind, nature, and description, and reversion or reversions, remainder or remainders, rents, issues, and profits thereof, and all lands and real estate to which the said railway company may be entitled by reason of the construction of said railroad, and all the estate, right, title and interest, property, or possession in law or in equity of the said railway company, together with all and singular the rights, privileges, corporate property, and franchises of said railway company, each and every part and parcel thereof, and all the appurtenances to the above-described premises belonging or in anywise appertaining; to have and to hold the same, with all the appurtenances and every part thereof, unto the said Henry C. Thacher and Morris K. Jesup, as purchasing committee aforesaid, their survivors or survivor, and their or his successors or assigns.

In witness whereof the said Mercantile Trust Company of New York has caused these presents to be signed in its corporate name, by its president, and attested by its secretary, with the corporate seal of said company, the day and year above written.

THE MERCANTILE TRUST COMPANY, *Trustee*,
By LOUIS FITZGERALD, *President*.

Attest: H. C. HEMING, *Secretary*.

STATE OF NEW YORK,
City and County of New York, } ss:

I, Chas. Edgar Mills, a notary public within and for the county and State aforesaid, certify that Louis Fitzgerald, president of the Mercantile Trust Company of New York, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument and who is also known to me to be the president of the said Mercantile Trust Company, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument as the free and voluntary act of the said Mercantile Trust Company for the uses and purposes therein set forth.

Given under my hand and notarial seal this 19th day of April, 1890. Commission expires 30th day of April, 1891.

CHARLES EDGAR MILLS,
Notary Public for New York County in N. Y.

385 STATE OF NEW YORK,
City and County of New York, } ss:

On this 19th day of April, 1890, before me personally came Louis Fitzgerald, president of the Mercantile Trust Company of New York, and personally known to me and known to me to be the president

of said company which executed the foregoing instrument, who, being by me duly sworn, says he resides in the city of New York, State of New York; that he is president of the Mercantile Trust Company of New York, and he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal of such company and was so affixed by authority of the board of directors of said company and in pursuance of said order and decree of court, and signed his name thereto by like authority as president of said company.

Given under my hand and notarial seal this 19th day of April, 1890. Commission expires 30th day of April, 1891.

CHARLES EDGAR MILLS,
Notary Public for New York County in New York.

STATE OF NEW YORK. }
City and County of New York, } *ss:*

Be it remembered that on this 19th day of April, 1890, personally came before me, the undersigned, a notary public within and for the county and State aforesaid, *personally came* H. C. Deming, secretary, who is personally known to me, and who, being by me duly sworn, did depose and say that he is the secretary of the Mercantile Trust Company of New York, trustee, grantor in the foregoing instrument; that he countersigned said instrument and affixed the seal of said company as a party thereto for the uses and purposes therein contained.

In witness whereof I have hereunto set my hand and affixed my notarial seal of office this 19th day of April, 1890. My commission expires April 30th, 1891.

CHARLES EDGAR MILLS,
Notary Public for New York County in N. Y.

[Endorsed:] Mercantile Trust Co. to Jesup & Thacher. Deed. Copy.

386 This indenture, made this 30th day of April, A. D. 1890, by and between the Missouri, Iowa & Nebraska Railway Company, party of the first part, and Henry C. Thacher and Morris K. Jesup, parties of the second part, witnesseth:

That whereas, by decree of the circuit court of the United States in and for the southern district of Iowa, dated October 22nd, 1880, in a certain suit therein pending, wherein The Farmers' Loan & Trust Company, trustee, as complainant and The Missouri, Iowa & Nebraska Railway Company and others — defendants, in equity, on original bill, and Lee, Higginson & Co. were cross-complainants and the said Missouri, Iowa & Nebraska Railway Company and the said Farmers' Loan & Trust Company and others were cross-defendants on cross-bill, and also by decree of the circuit court of the United States for the southern district of Iowa and eastern division thereof, dated July 8th, 1886, in certain proceedings supplementary to the suit aforesaid therein pending, wherein The Farmers' Loan & Trust Company, trustee, was complainant and the said Missouri, Iowa &

Nebraska Railway Company, The Mercantile Trust Company of New Yerk, The Wabash, St. Louis & Pacific Railway Company, and The Humeston & Shenandoah Railroad Company were defendants, the standing master of said court was ordered to advertise and sell at public auction the mortgaged property hereinafter more particularly described and included in the three separate mortgages executed by the Missouri, Iowa & Nebraska Railway Company and by said decrees foreclosed—that is to say, one bearing date the first day of June, 1870, and one bearing date the sixth day of January, 1879, both to the Farmers' Loan & Trust Company, trustee, and one bearing date March 1st, 1881, to the Mercantile Trust Company of New York, trustee. The said standing master was ordered to execute said decree in the event that the said Missouri, Iowa & Nebraska Railway Company, mortgager, should fail to pay within five days from the date of the said last-named decree the sum of two million five hundred and nin-ty-two thousand dollars and sixty cents and the further sum of thirty-eight thousand five hundred and twenty-four dollars and ninety cents, with interest and costs, provided in said decree; and

Whereas the said railway company did fail to pay the sums of money aforesaid within the period so ordered; and

Whereas one P. T. Lomax, then standing master of the said court and in pursuance of said decrees, did, in the city of Keokuk, in the State of Iowa, on the 19th day of August, 1886, duly offer for sale and did sell the property, franchises, and appurtenances hereinafter described to Henry C. Thacher and Morris K. Jesup, a purchasing committee for the holders of the bonds foreclosed as aforesaid, for the sum of six hundred thousand dollars; and

Whereas said circuit court of the United States did thereafter, on and subsequently to the said 19th day of August, 1886, duly confirm the said sale, and in conformity to said order of confirmation said P. T. Lomax did, as master aforesaid, duly make, execute, and deliver his deed to said purchasing committee; and

Whereas the said decree of foreclosure did further provide as follows: That defendants The Missouri, Iowa & Nebraska
387 Railway Company, Humeston & Shenandoah Railroad Company, and The Mercantile Trust Company shall each make, execute, and deliver to the purchaser or purchasers at the sai- sale, when the said sale shall have been approved and confirmed by the court, proper and suitable deeds or instruments of conveyance of the said mortgaged premises and property, conveying to the said purchaser or purchasers all the right, title, and interest of the said defendants of, in, and to the mortgaged premises and every part and parcel thereof; and

Whereas said standing master did make and execute his deed of conveyance to said purchasers in a certain form and, together with his report of sale, duly present said form of conveyance and report to said court, while in session, and both having been duly approved and confirmed:

Now, therefore, in consideration of the premises and in conformity to the provisions of said decrees, and in further consideration of one

dollar in hand paid, the receipt of which is hereby acknowledged, the said Missouri, Iowa & Nebraska Railway Company has granted, bargained, sold, and conveyed, and does by these presents grant, bargain, sell, and convey, unto Henry C. Thacher and Morris K. Jesup, the survivors or survivor of them and their or his successors and assigns, as such purchasing committee and in trust for the parties interested therein, all its right, title, and interest as mortgagor in said several mortgages in and to the following property, to wit:

All the property and franchises described and conveyed in and by the mortgages hereinbefore mentioned, being all the property and franchises of the said Missouri, Iowa & Nebraska Railway Company owned by and belonging to the said railway company at the respective dates of said mortgages or thereafter acquired by it, including, among other things, the following, to wit:

All and singular the pieces or parcels of land situated, lying, and being in the States of Missouri and Iowa, extending from the city of Keokuk, in the State of Iowa, in and through the county of Lee, in said State, and the counties of Clark, Scotland, and Schuyler, in the State of Missouri, and the counties of Appanoose, Wayne, and Decatur, in the State of Iowa, to the town of Van Wert, in said last-named county and State, and all and singular the railroad surveyed and constructed from and to the termini aforesaid, lying and being in the States aforesaid, together with all and singular the right of way for said railroad, as well as all other privileges and franchises belonging to said railway company, including its road-bed, grading, embankments, excavations, sidings, culverts, bridges, cross-ties, superstructures, track or tracks, iron rails, fences, stations and station-houses, depot grounds, and one-half interest in the superstructures and approaches thereto of the railroad and wagon bridge spanning the Des Moines river at a point known as Buena Vista, together with the right of use of the substructure of said bridge, and all the work, material, and operations for the construction of said railroad at any time made, done, or acquired by said railway company
388 and which in anywise appertains or shall appertain to said railway, and all and singular the buildings, machine shops, engine-houses, depots, turnouts, wood and water stations, water tanks, and all other buildings or structures, improvements, and constructions of every nature and description, together with all and singular the alienable franchises, emoluments, income, and advantages, tenements, hereditaments, and appurtenances, and all and singular the equipments and furniture, motive power, rolling stock, engines, tenders, cars, carriages, tools, fixtures, and machinery of every kind, nature, and description, and reversion or reversions, remainder or remainders, rents, issues, and profits thereof, and all lands and real estate to which the said railroad company may be entitled by reason of the construction of said railroad, and all the estate, right, title and interest, property, or possessions, in law or in equity, of the said railway company, together with all and singular the rights, privileges, corporate property, and franchises of said railway company, each and every part and parcel thereof, and all the appurtenances to the above-described premises belonging or in any-

wise appertaining; to have and to hold the same, with all the appurtenances and every part thereof, unto the said Henry C. Thacher and Morris K. Jesup, as purchasing committee aforesaid, their survivors or survivor and their or his successors or assigns.

In witness whereof the said Missouri, Iowa & Nebraska Railway Company has caused these presents to be signed in its corporate name by its president and attested by its secretary with the corporate seal of said company the day and year above written.

MISSOURI, IOWA & NEBRASKA
RAILWAY COMPANY,
By A. L. HOPKINS, *President.*

Attest: O. D. ASHLEY,
Ass't Secretary.

Witness to execution and delivery—
JOHN F. DILLON.
THOMAS E. FELL.

389 STATE OF NEW YORK, }
County of New York, } *ss:*

I, Thomas E. Fell, a notary public within and for the county and State aforesaid, certify that A. L. Hopkins, president of the Missouri, Iowa & Nebraska Railway Company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, and who is also known to me to be the president of the said Missouri, Iowa & Nebraska Railway Company, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument as the free and voluntary act of the said Missouri, Iowa & Nebraska Railway Company for the uses and purposes therein set forth.

Given under my hand and notarial seal this first day of May, 1890. Commission expires 30th day of March, 1891.

THOMAS E. FELL,
Notary Public, Kings Co., N. Y.

Certificate filed in New York Co.

STATE OF NEW YORK, }
County of New York, } *ss:*

I, a notary public within and for the county and State aforesaid, hereby certify that O. D. Ashley, assistant secretary of the Missouri, Iowa & Nebraska Railway Company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, and who is also known to me to be the assistant secretary of the said Missouri, Iowa & Nebraska Railway Company, appeared before me this day in person and acknowledged that he signed said instrument and affixed the corporate seal of said company as secretary thereof as the act and deed of said railway company for the uses and purposes therein set forth.

Given under my hand and seal this first day of May, 1890. Commission expires 30th day of March, 1891.

THOMAS E. FELL,
Notary Public, Kings Co., N. Y.

Certificate filed in New York Co.

[Endorsed:] M., I. & N. R'y to Jesup & Thacher. Deed. Copy.

390 This indenture, made this eighteenth day of April, A. D. one thousand eight hundred and ninety (1890), by and between Morris K. Jesup, by his attorney-in-fact, T. D. Witt Cuyler, and Henry C. Thacher, as trustees, being a committee duly constituted by and acting for the mortgage bondholders of the Missouri, Iowa & Nebraska Railway Company, hereafter called the parties of the first part, and the Keokuk and Western Railroad Company, a corporation duly created by and existing under the laws of the State of Iowa, hereinafter called the party of the second part:

Whereas by a decree of the circuit court of the United States in and for the district of Iowa, dated October 22nd, 1880, in a certain suit therein pending, wherein The Farmers' Loan & Trust Company, trustee, was complainant and the said Missouri, Iowa & Nebraska Railway Company and others were defendants, in equity, on original bill, and Lee, Higginson and Company were cross-complainants and said Missouri, Iowa & Nebraska Railway Company and the said The Farmers' Loan and Trust Company and others were cross-defendants, on cross-bill, and also by decree of the circuit court of the United States for the southern district of Iowa, eastern division thereof, dated July 9th, 1886, in certain proceedings supplementary to the suit aforesaid therein pending, wherein the said The Farmers' Loan & Trust Company, trustee, was complainant and the said Missouri, Iowa & Nebraska Railway Company, The Mercantile Trust Company, The Wabash, St. Louis and Pacific Railway Company, and The Humeston and Shenandoah Railroad Company were defendants—

The standing master of said court was ordered to advertise and sell at public auction the mortgaged property hereinafter more particularly described and included in three separate mortgages, executed by the Missouri, Iowa & Nebraska Railway Company, and by said decrees foreclosed—that is to say, one bearing date first day of June, 1870, and one bearing date the sixth day of January, 1879, both to the Farmers' Loan & Trust Company, trustee, and one bearing date March first, 1881, to the Mercantile Trust Company of New York, trustee;

The said standing master was ordered to execute said decrees in the event of the said Missouri, Iowa and Nebraska Railway Company, mortgagor, failing to pay within five days from the date of the said last-named decree the sum of two million five hundred and ninety-two thousand dollars and sixty cents, and the further sum of thirty-eight thousand five hundred and twenty-four dollars and nin-ty cents, with interest and costs, provided in said decrees; and

Whereas the said railway company did fail to pay the sums of money aforesaid within the period so ordered; and

Whereas one P. T. Lomax, then standing master of the said court, and in pursuance of said decrees, did, in the city of Keokuk and State of Iowa, on the 19th day of August, 1886, duly offer for sale and did sell the property, franchises, and appurtenances hereinafter described to Henry C. Thacher and Morris K. Jesup, parties
391 of the first part herein and purchasing committee for the holders of the bonds foreclosed, for the sum of six hundred thousand dollars; and

Whereas said circuit court of the United States did thereafter, on and subsequently to the said 19th day of August, 1886, duly confirm the said sale, and in conformity to said order of confirmation said P. T. Lomax did, as master aforesaid, duly make, execute, and deliver his deed to said purchasing committee; and

Whereas the said decree of foreclosure did further provide that defendants, The Missouri, Iowa & Nebraska Railway Company, The Humeston & Shenandoah Railroad Company, and The Mercantile Trust Company of New York, shall each make, execute, and deliver to the purchaser or purchasers at the said sale when the said sale shall have been approved and confirmed by the court proper and suitable deeds or instruments of conveyance of the said mortgaged premises and property, conveying to said purchaser or purchasers all the right, title, and interest of the said defendants of, in, and to the mortgaged premises and every part and parcel thereof; and

Whereas said standing master did make and execute his deed of conveyance to said purchasers in a certain form and, together with his report of sale, duly present said form of conveyance and report to said court while in session, and both having been duly approved and confirmed; and

Whereas said Missouri, Iowa & Nebraska Railway Company and said Mercantile Trust Company of New York did each thereafter, in conformity to said decree, order of sale, and confirmation, duly make, execute, and deliver their respective deeds to the parties of the first part herein:

Now, this indenture witnesseth that the said Morris K. Jesup and Henry C. Thacher, as trustees and committee aforesaid, for and in consideration of the sum of one dollar, lawful money of the United States of America, unto them in hand well and truly paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, as well for and in consideration of divers good and valuable considerations to them thereunto specially moving, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said Keokuk and Western Railroad Company, its successors and assigns—

All the property and franchises described and conveyed in and by the mortgages hereinbefore mentioned, being all the property and franchises of the Missouri, Iowa and Nebraska Railway Company owned by and belonging to said railway company at the respective dates of said mortgages or thereafter acquired by it, including, among other things, the following, to wit:

All and singular the pieces or parcels of land situated, lying, and being in the States of Missouri and Iowa, extending from the city of Keokuk, in the State of Iowa, in and through the county of Lee, in said State, and the counties of Clark, Scotland, and Schuyler, in the State of Missouri, and the counties of Appanoose, Wayne, and Decatur, in the State of Iowa, to the town of Van Wert, in said
392 last-named county and State, and all and singular the railroad surveyed and constructed from and to the termini aforesaid, lying and being in the States aforesaid, together with all and singular the right of way for said railroad, as well as all other privileges and franchises belonging to said railway company, including its road-bed, gradings, embankments, excavations, sidings, culverts, bridges, cross-ties, superstructures, track or tracks, iron rails, fences, stations and station-houses, depot grounds, and one-half interest in the superstructure and approaches thereto of the railroad and wagon bridge spanning the Des Moines river at a point known as Buena Vista, together with the right of use of the substruction of said bridge and all the work, materials, and operations for the construction of said railway company and which in anywise appertains or shall appertain to said railroad, and all and singular the buildings, machine shops, engine-houses, depots, turnouts, wood and water stations, water tanks, and all other buildings or structures, improvements, and constructions of every nature and description, together with all and singular the inalienable franchises, emoluments, income and advantages, tenements and hereditaments, and appurtenances, and all and singular the equipments and furniture, motive power, rolling stock, engines, tenders, cars, carriages, tools, fixtures, and machinery of every kind, nature, and description, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all lands and real estate to which the said railway company may at any time be or have been entitled to by reason of the construction of said railroad, and all the estate, right, title and interest, property, and possession, in law or in equity, of the said railway company, together with all and singular the rights, privileges, corporate property, and franchises of said railway company, each and every part and parcel thereof, and all the appurtenances to the above-described premises belonging or in anywise appertaining, and also all the right, title, and interest in us, all or any of us, by virtue of the premises herein or the said deeds of conveyance herein made and executed by the said Missouri, Iowa & Nebraska Railway Company and the said Mercantile Trust Company of New York:

To have and to hold the said premises, hereditaments, and appurtenances hereby granted or mentioned or intended so to be unto the said The Keokuk & Western Railroad Company, its successors and assigns, to and for the only proper use, benefit, and behoof of the said Keokuk & Western Railroad Company, its successors and assigns forever.

Under and subject, however, to the express stipulation, covenant, and condition that the said Keokuk and Western Railroad Company shall and will at all times hereafter forever save, indemnify, and keep harmless the said Morris K. Jesup and Henry C. Thacher,

trustees and committee as aforesaid, their and each and every of their heirs, executors, administrators, and assigns, of and from any and all loss, damage, injury, or other liability which they or
393 either of them may sustain or suffer for or on account of or growing out of their appointment as trustees and committee aforesaid on their management of said trust, as well from any act, matter, or thing of whatsoever nature or kind the same may be done, performed, or suffered by them or either of them in connection with said trust estate or property or springing thereout, whether the same be by sale, transfer, and conveyance or otherwise howsoever.

In witness whereof the said Morris K. Jesup, by Thomas De Witt Cuyler, his attorney-in-fact, and Henry C. Thacher, as trustees and committee as aforesaid, have hereunto interchangeably set their hands and seals the day and year first hereinbefore written.

HENRY C. THACHER. [SEAL.]
MORRIS K. JESUP,
By his attorney-in-fact,
THOMAS DE WITT CUYLER. [SEAL.]

STATE OF PENNSYLVANIA, }
County of Philadelphia, } *ss:*

Be it remembered that on this 22nd day of April, before me, Theodore M. Etting, a notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, personally appeared Thomas De Witt Cuyler, attorney-in-fact for Morris K. Jesup, one of the trustees and committee here-before set forth, who is personally known to me to be the identical person who subscribed the name of said Morris K. Jesup to the foregoing deed as one of the grantors therein, and said Thomas De Witt Cuyler, as such attorney-in-fact, acknowledged the same to be the act and deed of the said Morris K. Jesup and that of his constituents for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

THEODORE M. ETTING,
Notary Public.

STATE OF MASSACHUSETTS, }
County of Suffolk, } *ss:*

Be it remembered that on this 18th day of April, 1890, before me, Melville M. Weston, a notary public within and for the county of Suffolk and Commonwealth of Massachusetts, personally appeared Henry C. Thacher, one of the trustees and committee hereinbefore set forth, who is personally known to me to be the identical person whose name is affixed to the foregoing deed as one of the grantors therein, and acknowledged the same to be his act and deed for the uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

MELVILLE M. WESTON,
Notary Public.

[Endorsed:] Jesup & Thacher to Keokuk & Western R. R. Deed. Copy.

394 In the United States Circuit Court, Southern District of Iowa, Eastern Division.

THE FARMERS' LOAN AND TRUST COMPANY, Complainant, *vs.* THE MISSOURI, IOWA AND NEBRASKA RAILWAY COMPANY *et al.*, Defendants. } In Equity.

Petition for Receiver to Turn Over Railway to Keokuk and Western Railroad Company.

Now comes Morris K. Jesup and Henry C. Thacher and show to the court that since the sale and purchase by them of the mortgaged property and franchises of the said Missouri, Iowa and Nebraska Railway Company, on the 19th day of August, 1886, and the confirmation of said sale, on the 21st day of September, 1886, they have paid to P. T. Lomax, Esx., master in chancery of this court, the balance of the said purchase price in accordance with the terms and conditions of the decree of foreclosure and sale in said cause and have now received from the said master the deed of conveyance to said mortgaged property and franchises authorized by a former decree of this court to be executed and delivered to them on the payment of such balance of purchase-money. They further show to your honors that the Keokuk and Western Railroad Company is a corporation duly organized and existing under the laws of the State of Iowa and has power to purchase, acquire, own, use, and operate the entire line of railway and franchises of the said Missouri, Iowa & Nebraska Railway Company, and was, in fact, organized for that purpose.

That your petitioners have by proper deeds conveyed the said property and franchises to the said Keokuk and Western Railroad Company, and now desire that Thomas Thacher, receiver herein, be required to turn over and deliver possession to the said Keokuk and Western Railroad Company — all the railway, property, and franchises of the said Missouri, Iowa and Nebraska Railway Company, together with all other property and appurtenances of every nature and description which belong to or are in any way connected with the use and operation of the said railway which are now in the possession or under the control of the said Thomas Thacher, as such receiver, and for such other and further orders as may be necessary and proper in the premises.

F. T. HUGHES,
Solicitor for Petitioners.

Endorsed: Filed Dec. 3, 1886. H. K. Love, clerk.

395 UNITED STATES OF AMERICA, *Southern District of Iowa, Eastern Division,* } ss:

I, H. K. Love, clerk of the United States circuit court in and for the southern district of Iowa, eastern division, at Keokuk, do hereby certify that the foregoing writing is a full, true, and correct copy of the petition for receiver to turn over railway property to Keokuk and Western Railroad Company, as full, true, and correct as appears by the original now on file in my office, at Keokuk.

In witness whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at my office, at Keokuk, this 13th day of March, A. D. 1890.

H. K. LOVE, *Clerk,*
By ERIE J. LEECH, *Deputy.*

[Endorsed:] Petition of Keokuk & Western R. R. Co. for Receiver Thacher to turn over property.

396 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

CHARLES A. SECOR *et als.*, Complainants,
vs.
JAMES H. SINGLETON *et als.*, Defendants. } In Equity. No. 1505.

F. T. Hughes, H. S. Priest, and Geo. S. Grover, solicitors for complainants; Anderson & Davis, solicitors for respondents.

Opinion of the Court.

In matter of citation against R. M. Thompson, J. E. Billups, W. W. Buford, and William Y. Wyne to show cause why they should not be punished for contempt.

MAY 24TH, 1888.

THAYER, *D. J.:*

First. The motion to adjudge the respondents guilty of contempt, notwithstanding the return to the citation, like a demurrer, admits all the facts stated in the return. Complainants, as non-resident stockholders of the Missouri, Iowa & Nebraska R. R., on May 10th, 1882, obtained a final decree against the then county judges of Scotland county and the county collector, enjoining them and their successors in office "from levying or attempting to levy, collecting or in any manner attempting to collect from or of the Missouri, Iowa & Nebraska Railway Company any taxes whatever, State,
397 county, or municipal, * * * * until the expiration of the period of exemption from taxation, limited in the charter of said railway company, to wit, until December 1st, 1892."

The interest which complainants had in the property that had been exempted from taxation was that of stockholders in the railroad company that then owned the exempt property, and it was on the strength of such interest that they were allowed to maintain the

bill for an injunction and eventually secured the decree above mentioned.

The respondents' return alleges, among other things, that all the property of the Missouri, Iowa & Nebraska Railway Company to which the exemption from taxation applies was sold under a decree of foreclosure on August 18th, 1886, and that on December 3rd, 1886, it was delivered to and became vested in a corporation known as the Keokuk & Western R. R. Co., "and that the complainants have no longer any interest whatsoever in said * * * property or in the question of the taxation thereof or in the matter of collecting taxes thereon."

That clause of the return which I have placed in quotation if standing alone might be treated as a conclusion of law and be ignored for that reason. Taken, however, in connection with the averments that precede it (showing in what manner the complainants have been dispossessed of their interest), the clause in question is well pleaded and cannot be disregarded.

For the purposes of the motion the foregoing averments must be taken as confessed, and the question accordingly arises whether, in the face of the admission that the complainants had lost all interest whatsoever in the maintenance of the injunction when the information herein was filed, the court ought to entertain their application to punish the respondents for a contempt.

398 This question must be answered in the negative.

When an injunction has been granted, as in this instance, in a suit between individuals to protect one of the parties in the enjoyment of some private right, immunity, or franchise, it seems to be the rule that no one is entitled to complain of a violation of the same unless it be some one who has a present interest in maintaining the injunction, nor unless he was a party to the suit in which the order was obtained, or for some reason stands in privity with one who was a party to the litigation.

In cases where an injunction has been granted to enforce or maintain a merely private right, a proceeding instituted to punish a party for violating the order is very generally regarded as a proceeding to redress a private injury, in which the public have no immediate concern, and for that reason the prosecutor or person filing the information must have an interest in the proceeding differing from that of the general public, otherwise the courts will not entertain the information.

Hawley *vs.* Bennett, 4 Paige, 163.
Rapalje on Contempts, section 127.
High on Injunctions, section 1449, 2nd edition.

The cases show that the party in whose favor an injunction has been awarded may by express agreement or by his conduct release the injunction, or at least waive his right to have particular acts done in violation of the restraining order adjudged to be a contempt.

Mills *vs.* Cobby, 1st Merivale, 3.
Barfield *vs.* Nicholson, 2 L. J. Chan., 90.
Hall *vs.* Harris, 45 Conn., 544.
High on Injunctions, sec. 1450, 2nd edition.

In view of this fact it would seem to follow logically that an injunction obtained to protect a merely private right is so far within the control of the party obtaining it and is so far a matter
399 of individual concern that only those persons who have a present interest in the right to be protected can be heard to complain of its violation.

If a person in whose favor an injunction has been granted complains of its violation a presumption should no doubt be indulged in his behalf without any averment that he still has an interest in the subject-matter to which the injunction relates, and if such interest is called in question by the respondent the court would not perhaps deem it necessary to inquire very particularly as to the nature or extent of the prosecutor's interest further than to assure itself that the prosecutor is not a mere intermed-ler. If the present complainants are now stockholders in the Keokuk & Western R. R., which has become the owner of the exempt property, I am inclined to the view that that gives them a sufficient interest to maintain this prosecution, assuming for the purposes of the case that the property in the hands of the Keokuk & Western R. R. is still exempt from taxation.

Nevertheless it is essential, in my judgment, that the person who sets on foot a prosecution for contempt should have some present interest in enforcing obedience to the order which has been violated; and when it is admitted, as in the present case, that no such interest exists the court cannot properly entertain the proceeding.

Second. What has been said disposes of the motion, but as the action of the court in overruling the motion on the ground above stated does not necessarily end the proceeding, and as some other questions have been discussed, they will be decided.

First in order of importance is the plea that the court ought not to punish the respondents for the alleged contempt because the Keokuk & Western R. R. Co. has for a long period acquiesced
400 in the acts constituting the alleged contempt.

That there has been such acquiescence admits of no controversy on the facts stated in the return.

In March, 1886, William Y. Wyne, as collector of Scotland county, intervened in a suit brought to foreclose a mortgage on the property of the Missouri, Iowa & Nebraska R. R. for the purpose of collecting taxes for the year 1885, levied by the county court of Scotland county on what is claimed to have been property that was exempt from taxation according to the decree of this court and the decision of the supreme court of Missouri in Scotland County *vs.* Mo., Ia. & Neb. R. R., 65 Mo., 123.

Subsequently in the year 1887 he brought suit against the Keokuk & Western R. R. Co. in the circuit court of Scotland county to recover taxes for the year 1886, assessed against the same property. The present county judges of Scotland county who are made respondents did not levy the taxes for 1885 and 1886 so sued for, such levy having been made, it seems, by their predecessors in office. They made an appropriation, however, of certain money to prose-

cute the intervention in the foreclosure proceeding for the taxes of 1885.

These are the several acts constituting the alleged contempt on the part of the respondents.

In each of those suits the Keokuk & Western R. R. joined issue and went to trial, long before the present information was filed by the complainants to punish the respondents for contempt in bringing the suits. In one of the cases judgment had already been recovered for the taxes of 1886 before the information was filed. In the other case it seems that the Keokuk & Western R. R. was instrumental in causing the same to be set for trial and heard,
401 although the respondents had taken no action in that direction. That case, however, is as yet undecided.

After all these acts—after the Keokuk & Western R. R. Co. had actively participated for months in litigation that was carried on apparently in open violation of a decree of this court, and after it had been defeated in one of the suits, the present information was filed on March 16th, 1888, and it is now insisted that the court shall commit the respondents for contempt unless they at once release the judgment already obtained and dismiss the intervention which is still pending and undetermined.

On the face of the transaction it looks very much as though the Keokuk & Western R. R. Co. was the real prosecutor and as though its object was to defeat the suits above mentioned, which it has not succeeded in doing in the courts before whom the same are pending.

Viewing the case in that light, the right of the railroad company to insist that the respondents shall be punished for contempt because the suits were brought, and that they shall be compelled to dismiss the same, must be denied. It has acquiesced too long in the right asserted by the respondents to maintain those actions to now insist, so far at least as those particular suits are concerned, that they have all the time been prosecuted in violation of the orders of this court.

Mills *vs.* Cobby (*supra*).

If such was its view of the effect of the injunction it should at once have asked this court to interpose its authority to arrest the prosecution of the suits. As a purchaser from the Missouri, Iowa & Nebraska R. R. of the property to which the exemption attached, no reason is perceived why it might not have lodged an information complaining of the alleged violation of the decree of May
402 10th, 1882. It did not choose to pursue that course. It made its election to defend the suits as though rightfully brought and took the chances of making a successful defence.

Having adopted that course (if the facts be as stated in this return), the court will not, at the instance of the Keokuk & Western R. R. Co., adjudge the prosecution of those particular suits to be a contempt, nor will it interfere with the further prosecution of the same in the respective courts in which they are now pending.

If it be true that the complainants filed the present information of their own violation to protect their own interests, and that they did not file it at the solicitation or for the accom-odation of the Keo-

kuk & Western R. R. Co., the conclusion already announced would not be changed.

It is obvious that complainants can have no personal interest in the subject-matter of the controversy, except as stockholders of the Keokuk & Western R. R. Co., which now owns the exempt property.

Though the taxes for the years 1885 and 1886 were assessed against the Missouri, Iowa & Nebraska R. R., yet under the law they can only be enforced against the property on which they were levied, and that has long since passed into the possession of the Keokuk & Western R. R. A judgment on the tax bills even for costs cannot be recovered against the Missouri, Iowa & Nebraska R. R. under the revenue laws of this State.

Both the State and the county of Scotland must look to property, now belonging to the Keokuk & Western R. R. for payment of the tax bills, even if it be conceded that the assessments were lawful.

Assuming the matters stated in the return to be true, it is not possible to conceive how the Missouri, Iowa & Nebraska R. R.
403 can at the present day be in anywise interested in the pending controversy.

That being the case and inasmuch as complainants derive whatever interest they have in maintaining the injunction from their connection with the Keokuk & Western R. R. Co., it follows that if the railroad company has waived or forfeited its right to have respondents punished for contempt because of the acts alleged in the information and return, then the complainants are equally without right to maintain such prosecution.

Third. In conclusion I will add that I see no reason to question the validity or binding force of the decree rendered in this case on May 10th, 1882, on account of anything contained in decision *In re* Ayers, 123 U. S., 443.

The two cases (in my opinion) may be readily distinguished. In the Ayers case there was no doubt whatever that the officers enjoined were proceeding to do what the laws of the State of Virginia expressly required them to do. The injunction awarded against them was in effect an injunction against the State. In the present case no law of the State of Missouri required the officers of Scotland county to assess taxes against the property of the Missouri, Iowa & Nebraska R. R. or to bring suits for their collection if such property was exempt.

The court held that the property was exempt. Its injunction, therefore, instead of commanding a State officer to refrain from doing that which a statute of the State imperatively commanded him to do, really enjoined the officer not to violate a law of the State by assessing taxes on exempt property. The State was neither a nominal or real party defendant.

An order will be entered overruling the motion to commit respondents, notwithstanding the return.

404 If complainants desire to take issue with any of the averments in the return they will have to do so within five days; otherwise respondents will be discharged from the citation at complainants' costs.

405 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

CHARLES A. SECOR *et al.*
vs.
JAMES K. SINGLETON *et al.*

F. T. Hughes, H. S. Priest, and George S. Grover, solicitors for complainants.

Opinion of the Court on Ex-parte Motion for a Citation Against William H. Wine, Collector of Scotland County, et als.

MARCH 8TH, 1889.

THAYER, *District Judge:*

This application for another citation against William H. Wine, collector of Scotland county, *et als.*, to show cause why they should not be punished for contempt for violation of a decree of this court rendered on May 10th, 1882, is based on the ground that the defendants have recently made a motion in the supreme court of the State to speed the hearing of a tax suit now pending in that court.

The tax suit in question is the same one that is referred to in Secor *vs.* Singleton, 35 Fed. Rep., at page 379. These complainants on March 16th, 1888, obtained a citation against William H. Wine *et al.* to show cause why they should not be punished as for a violation of the decree of this court of May 10th, 1882, because
406 of the prosecution by them of said tax suit in the circuit court of Scotland county, Missouri. The return made to that citation gave rise to the decision above referred to, 35 Fed. Rep., 379. This court held that the return then filed was good and sufficient, and that if the complainants, as alleged, had lost all interest in the property on which the taxes sought to be enforced were assessed, and in the question of the right of the State to tax such property, that they could not maintain the proceeding to punish the defendants for contempt.

The court also held that if it was true, as alleged in the return to the citation, that the Keokuk & Western R. R. Co., the owner of the property on which the taxes were levied, had entered its appearance to the tax suit in the State court and defended the same for months and until judgment was rendered against it, and in the meantime had made no complaint to this court that the proceeding in the State court was being conducted in violation of its decree of May 10th, 1882, that it had acquiesced too long in the acts constituting the alleged contempt and had waived its right to have respondents punished therefor even if the acts amounted to a contempt, and that if the present interest of these complainants was merely that of stockholders in the Keokuk & Western R. R. Co. they were likewise affected by the conduct and acquiescence of the latter company and could not be heard to complain at this time of the prosecution of the tax suit in question.

Leave was given, however, to the complainants to take issue with

any of the averments contained in the return to the former citation within five days.

In pursuance of such leave they filed what is termed a reply to the return on June 1st, 1888. Subsequently, by consent of parties, an amended information and return thereto appear to have been filed. No other action has since been taken under the original citation.

407

The fact that the defendants have recently made a motion in the supreme court to advance the tax case on the calendar, as before stated, is made the basis of a second motion for a citation against the same persons formerly proceeded against and their attorney.

The motion so made will be overruled for the following reasons:

The Keokuk & Western R. R. Co. had not only defended the tax suit in the State circuit court for several months and until judgment had gone against it, but had actually taken an appeal from that judgment to the supreme court of the State before even the original citation was asked for and obtained on March 16th, 1888. The amended information in the original proceeding and the return thereto, now on file, leave no doubt that such was the fact. These complainants, as it also appears, have now no interest in the controversy as to the right to tax the property in question other than as stockholders of the Keokuk & Western R. R. that now owns the property. Such being the fact, this court will not entertain a motion either at the instance of the Keokuk & Western R. R. Co. or of these complainants to punish the defendants as for contempt for prosecuting the tax suit in question. It is so held in Secor *vs.* Singleton (*supra*), and no sufficient reason is shown for modifying the views therein expressed.

That persons who have obtained an injunction to protect a merely private right may so acquiesce in a violation of the same as to deprive themselves of any standing in court to have the acts so done adjudged to be a contempt admits of no doubt on the authorities before cited.

The case at bar, in my judgment, furnishes a good illustration of acts and conduct that ought to preclude the complainants from obtaining the relief sought by this motion.

408

The Keokuk & Western R. R. Co. had an undoubted right, as purchaser of the property to which the exemption from taxation applied, to inform the court of the alleged violation of its decree and to ask for the process now demanded as soon as the tax suit was filed. It did not do so then nor for months after; indeed, not until it had defended the suit on the merits and had failed in its defence and had itself prosecuted an appeal to a higher court for the purpose of having the judgment against it reviewed. A party who knows or believes that a suit is being prosecuted against him in violation of an injunctive order of another court, but nevertheless participates in the litigation to the extent of defending the same suit on the merits, ought not to be permitted, after the suit has been prosecuted to final judgment, to then prosecute the successful litigant for contempt.

Such is the attitude of the corporation for whose benefit the present motion is filed, and neither it or the complainants, who have no interest in the controversy except such as is derived from the corporation, should, in my opinion, be allowed to complain of the prosecution of the tax suit now pending in the supreme court of the State as a violation of the decree of this court. There is another reason that would predispose the court to deny the present motion, even if it was of the opinion that complainants had not waived their right to complain of the prosecution of the tax suit.

The question to be determined in that suit concerns the right of the State to tax the property at the time the taxes sued for were assessed. A bill to obtain a decision of the same question is also pending in the United States circuit court for the northern
409 division of this district, and an injunction has been obtained restraining the collection of certain taxes on the property until the question is adjudicated. If this proceeding for contempt is entertained the same question as to the liability of the property to taxation will probably arise and may have to be determined.

A question of that nature ought not to be tried and determined on a mere motion to punish persons for contempt, especially in view of the fact that several of the parties to the bill above referred to, now pending in the northern division of the district, are not parties to the present motion.

This court is in nowise concerned with the motives that may have prompted the defendants or their counsel to move for a speedy hearing of the tax suit in the supreme court of the State.

Considerations of that character are entirely out of place. This court will only inquire whether the action complained of is, under the circumstances, a violation of the orders of this court and a negative answer must be returned to that question for the reasons above stated.

The motion for a citation is accordingly overruled.

410 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

CHARLES A. SECOR *et als.*
vs.
JAMES K. SINGLETON, SCOTLAND CO., CLARK CO., SCHUYLER COUNTY, THE MISSOURI, IOWA & NEBRASKA RAILWAY COMPANY, *et als.*

The bill in this case recites in substance that Charles A. Secor *et als.*, in a suit heretofore instituted by them in this court as stockholders of the Missouri, Iowa and Nebraska Railway Company, obtained a final order of injunction restraining the railway company from paying taxes on its property located in Scotland, Schuyler, and Clark counties, Mo., and restraining the several counties and certain county officials from levying and collecting or attempting to levy or collect any taxes on said property prior to the year 1892; that

thereafter the property of the railway company to which the injunction related was sold under a decree foreclosing a mortgage executed by the Missouri, Iowa & Nebraska Railway Company in the year 1870 and became by purchase the property of the Keokuk and Western Railway Company (the present complainant) about the 1st of December, 1886, and that since the last-mentioned sale Scotland county has begun proceedings to enforce the collection of certain taxes assessed against the property in question whilst it was owned by the Missouri, Iowa and Nebraska Railway Company.

411 The prayer is that the suit in which the injunction was obtained may be revived in the name of the Keokuk & Western Railway Company, and that it may have the benefit of the decree in that proceeding.

The bill is demurred to by Scotland and Clark counties and the county judges thereof.

F. T. Hughes and H. S. Priest, solicitors for complainant; T. S. Montgomery & Anderson & Schofield, solicitors for Clark county; John C. Moore, Esquire, solicitor for Scotland county.

THAYER, *District Judge* (after stating the facts as above):

First. On the hearing of the demurrer there was much controversy as to the character of the bill now before the court and as to whether it could be maintained after a final decree.

Touching these points, it is sufficient to say that the court regards it as an ordinary supplemental bill.

Complainant (The K. & W. R'y Co.) suggests to the court that since the final decree it has acquired all the interest of one of the original parties in and to the property affected by the litigation and by the decree, and that since the decree certain county officers who were parties to the suit, only in an official capacity, have ceased to be such officers, and that others have been elected in their stead. There is a prayer that the complainant who has succeeded to the ownership may be substituted to that position with respect to the litigation that was formerly occupied by the party to whose

412 interest he has succeeded, to the end that certain further action may be taken under the decree.

The bill is clearly an ordinary supplemental bill, and the proceedings thereon are regulated in this court by the 57th equity rule, and in England by statute.

15 & 16 Vic., c. 86, sec. 52.

Dan. Chan. Plead. & Pr., 1515 & 1524, 5th ed.

Van Hook *vs.* Throckmorton, 8 Paige, 33.

Sedgewick *vs.* Cleveland, 7 Paige, 287.

With respect to the right to file a supplemental bill after final decree, it may be said that the rule is the same as in case of bills of revivor. Such bills, it seems, may be filed as well after a final decree as before if a person who has succeeded to the interest of one of the original parties to the suit in such manner as to entitle him to the full benefit of the decree finds it necessary to invoke further action on the part of the court to obtain such benefit. Indeed a per-

son entitled to the benefit of a decree by acquiring an interest in the subject-matter of the controversy subsequent to the decree is not, as it seems, entitled to invoke the aid of the court or take further action until he has made himself a party by supplemental bill and has brought in the representatives or successors in interest of other original parties plaintiff or defendant.

Dan. Chan. Plead. & Prac., 1537, 1536, 1525, 5th ed.
Sedgewick *vs.* Cleveland (*supra*).
Van Hook *vs.* Throckmorton (*supra*).
Binks *vs.* Binks, 2 Bligh, 593 & 594.
Owing's Case, 1 Bland's Ch., 409.

Second. Treating the pleading now before the court as a supplemental bill filed after final decree by a party who has succeeded to an interest in the subject-matter of the litigation, the question arises whether the complainant occupies such a relation to any of the parties to the original suit as entitles him to file such a bill.

413 The decision of this question must depend on the inquiry whether the decree in the original suit is as conclusive between the K. & W. R'y Co. and the several counties and county officials as it was or is between the Missouri, Iowa & Nebraska Railway Company and those parties. The K. & W. R'y Co. has, by virtue of the foreclosure sale, acquired all the interest in the property affected by the litigation that was formerly owned by the Missouri, Iowa & Nebraska Railway Company; if, then, that decree is as conclusive in its behalf as it was in favor of its predecessor in interest, no reason is perceived why it may not file its supplemental bill and be admitted a party to the record and obtain the benefit of the decree already entered without being put — the necessity of filing an original bill to establish its right.

The question to be decided seems to be substantially one of privity.

It is insisted by defendant's counsel that the original decree did not affect the property purchased at the foreclosure sale in any such manner as to bind a subsequent owner in any event; that it did not qualify the estate or interest that the Missouri, Iowa & Nebraska Railway Company had in the property, and hence was not one of those adjudications that run with the land and bind a subsequent owner through privity of estate, or that can be invoked for the protection of a subsequent owner.

This position the court regards as untenable.

The original suit concerned the right to tax the property in question. The decree determined that the property would be exempt from assessment for taxation until 1892 if owned in the meantime by the Missouri, Iowa & Nebraska Railway Company, and in accordance with that determination enjoined the counties and cer-

414 tain county officials, who were parties defendant, from collecting or assessing taxes thereon during the continuance of such ownership. The decree accordingly had a direct effect on the property; it attached thereto an important immunity not usually incident to ownership, that rendered ownership more valuable.

It was, in my judgment, precisely one of those adjudications which reach beyond parties to the record and bind as well privies in estate.

Regina *vs.* Blakemore, 2 Den. Cr. C, 410.
Adams *vs.* Barnes, 17 Mass., 367.
Cooley *vs.* Warren, 53 Mo., 166.
Bigelow on Estoppel, pages 144 & '5, 5th ed.

It is further contended that the original decree herein could not be pleaded as an estoppel in a suit brought by the Missouri, Iowa & Nebraska Railway Company against the several counties who with the railway company were parties to the original action, for the reason that the company and the counties were all named as defendants in the stockholder's bill, and that as between them no issue was raised or litigated.

Hence it is argued that as the K. & W. R'y Co. is merely the successor in interest of the Missouri, Iowa & Nebraska Railway Company, it could enforce no right under the original decree as against the several counties, even if admitted to become a party to the record.

I am forced to regard this reasoning as erroneous.

The sole question at issue in the original suit was whether the Missouri, Iowa & Nebraska Railway Company was entitled to an exemption from taxation on its property located in the several counties, and upon that issue the company and the counties occupied the position of adversaries.

Although the bill was filed by stockholders of the railway company, they did not sue to enforce an individual right,
415 but solely to enforce a right or immunity that pertained to the corporation.

The suit was essentially a suit by the corporation against the counties that the stockholders were allowed to prosecute in its behalf because the directors had been negligent in asserting the right of the corporation.

Dodge *vs.* Woolsey, 18 Howard, U. S., 331.
Memphis *vs.* Dean, 8 Wall, 73.

Inasmuch, then, as the suit was in effect a suit by the railway company against the counties, and was likewise an equity proceeding, it is wholly immaterial how the parties were arranged upon the record. The decree rendered was certainly a conclusive adjudication between the company and the counties that the property of the former was exempt from taxation, and in a suit between them might be invoked as an estoppel.

But there is another point of view from which it appears to the court that the decree in the stockholders' suit cannot be regarded as conclusive between the counties and the K. & W. R'y Co. upon the points litigated in that suit.

It must be borne in mind that the K. & W. R'y Co. is not a grantee of the Missouri, Iowa & Nebraska Railway Company under a conveyance executed by the latter company subsequent to the decree in the stockholders' suit or pending that litigation.

The K. & W. R'y Co. acquired its title by the foreclosure of a mortgage that was executed by the Missouri, Iowa & Nebraska Railway Company in the year 1870, and it does not appear that the mortgagees or any representative of the mortgagees were made parties to the stockholders' suit of Secor and others against the railway company and the several counties.

A purchaser at a foreclosure sale becomes a privy in estate
416 with the mortgagor so as to be bound by a decree against or in favor of the mortgagor in a suit between the latter and third parties affecting the mortgaged premises only in those cases where the mortgagee can be regarded as a privy. The purchaser's rights are precisely those of the mortgagee, and, like his, relate back to the mortgage.

A mortgagee is privy in estate with a mortgagor only in respect to the estate as it existed when the mortgage was executed.

Mathes *vs.* Cover, 43 Ia., 512.

It is a well-settled rule that mortgagees are not bound by judgments or decrees rendered against the mortgagor and affecting the mortgaged premises in suits begun by third parties subsequent to the execution of the mortgage unless the mortgagees are themselves made parties or some one authorized to represent them, like trustees of mortgage bondholders, are made parties to the litigation.

The doctrine of privity cannot be invoked to bind mortgagees by decrees against the mortgagor in suits between him and third parties unless the mortgage was executed *pendente lite* or after the decree.

Campbell *vs.* Hall, 16 N. Y., 575.
Scates *vs.* King, 110 Ills., 456.
Dooley *vs.* Potter, 140 Mass., 49.
Cutter *vs.* Jones, 52 Ills., 84.
Zoeller *vs.* Riley, 100 N. Y., 102.
Doe *vs.* Derby, 1 Ad. & E., 783.
Bigelow on Estoppel, pages 142 & 143, 5th ed.

The result of the rule as applied to the case at bar undoubtedly is that if the stockholders' suit of Secor and others had terminated in favor of the counties by a decree adjudging that the property of the Missouri, Iowa & Nebraska Railway Company was subject to taxation, and that tax assessments thereon were valid, such
417 a decree would not have been conclusive against the mortgagees in the then outstanding mortgage nor against the K. & W. R'y Co. Therefore the decree actually rendered in that case declaring the property to be exempt cannot operate as an estoppel between the counties and the K. & W. R'y Co., for the reason that an estoppel must always be mutual.

McDonald *vs.* Gregory, 41 Ia., 513.
Bigelow on Estoppel, 113 & 114.

As the supplemental bill does not show that the K. & W. R'y Co. stands in such privity with the Missouri, Iowa & Nebraska Railway

Company as entitles it to the protection of the decree heretofore rendered in favor of the last-named company, the demurrers to the bill should be sustained, and it is so ordered.

418 In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

CHARLES A. SECOR *et al.*
vs.
JAMES K. SINGLETON *et als.*

This was an amended supplemental bill in the nature of a bill of revivor filed by the Keokuk & Western Railway Company to have the original decree in the above-entitled cause revived in its name and enforced for its benefit. See 41st Fed. Rep., 725.

F. T. Hughes and H. S. Priest, solicitors for complainant, The Keokuk & Western Railway Co.; T. I. Montgomery and F. L. Schofield, solicitors for Clark county; J. C. Moore, solicitor for Scotland county.

Opinion, January 10, 1891.

THAYER, *District Judge* (orally):

1st. This court held on demurrer to the first supplemental bill filed by the Keokuk & Western Railway Company that it was not entitled to have the decree in the case of Secor *et al.* against Singleton revived in its name and for its benefit, because it did not stand in privity with any of the original parties to the suit. *Vide* 41 Fed. Rep., 725.

419 The decision that the Keokuk & Western Railway Company did not stand in privity with any of the original parties to the suit in such sense as to be bound by the original decree or to be entitled to the benefit thereof was based upon the fact that the bill showed that it (the Keokuk & Western Railway Company) was a purchaser of the property at a foreclosure sale under a mortgage executed long prior to the institution of the Secor suit by the M., I. & N. R'y Co., and that neither the mortgagees or any representative of the mortgagees were made parties to that suit.

The court accordingly concluded that the mortgagees would not have been bound by a decree in the Secor case adjudging that the mortgaged property was subject to taxation, and that the counties who were parties defendant to the Secor case are not bound in a controversy with the Keokuk & Western Railroad Company by the decree in the Secor case adjudging that the property is exempt from taxation.

An amended bill has been filed by the Keokuk & Western R'y Company, in which an effort is made to show that it does not derive title at a foreclosure sale under the mortgage executed by the M., I. & N. R'y Co., dated June 1st, 1870, but that it derives title at a foreclosure sale under a mortgage executed by the M., I. & N. R'y Co. subsequent to the institution of the Secor case, and hence that it

stands in privity with the M., I. & N. R'y Co., and is bound by the decree in that case according to the principle heretofore invoked. 41 Fed. Rep., 728.

Answers have been filed to the supplemental bill, denying in effect that the Keokuk & Western Railway Company acquired its title under a mortgage executed pending the Secor suit, and considerable record testimony has been offered under the issue so raised.

420 Concerning that issue it will suffice to say that the court finds from the record evidence that the complainant derives its title to the property in controversy under the mortgage of date June 1st, 1870.

Its title to the property in question relates back to that mortgage, and, according to the authorities cited in the previous decision, if the defendants Clark, Scotland, and Schuyler Counties were now pleading as against the complainant that the decree in the Secor case operated as an estoppel as to any of the questions therein litigated and decided, the fact that its title had its inception in the mortgage of 1870 and that no representative of the mortgagees was made a party to the Secor case would be a conslusive answer to such plea of estoppel.

2nd. It is furthermore contended that in the Secor case the M., I. & N. R'y Co. was the representative of the mortgagees under the mortgage of June 1st, 1870, and that the court erred in holding otherwise in its previous decision.

This contention is based solely on the assumption that by the laws of this State a judgment for taxes is binding upon all parties having an interest in the property assessed, and that a sale under such judgment passes an indefeasible title, although only the mortgagor is made a party to the suit. Hence it is argued that by the laws of the State the mortgagor in possession becomes the representative of mortgagees in all suits of whatsoever character relating to taxation.

It occurs to the court that even though the assumption on which the argument is founded was well made the inference drawn therefrom would not follow.

It is competent, no doubt, for the legislature to enact that suits for taxes may be brought against the mortgagor in posses-
421 sion and that a judgment in such suit shall conclude prior mortgagees and that a sale thereunder shall bar all their rights, including the right to redeem from the tax lien.

It will be found, however, that the legislature has not so declared. On the contrary, it has been "repeatedly held (says the supreme court of the State in Graves *vs.* Ewart, 99 Mo., 17) that the purchaser at these sales (referring to sales under judgments for taxes) acquires and acquires only the title and interest of the parties who are made defendants. Powell *vs.* Greenstreet, 95 Mo., 14, and cases cited."

But if the law concerning suits for taxes was as counsel suppose it to be, both in relation to who shall be made parties and in relation to the effect of judgments recovered in such suits, how could that statute have any bearing in determining the scope of the decree in

in the case of Secor *vs.* Singleton? If the law was as supposed it would simply determine the effect to be given to judgments rendered in tax suits. The Secor case was not a statutory proceeding to recover a judgment for taxes. It was a bill filed and prosecuted in accordance with the established rules of procedure in equity to determine whether, during a period of years, certain property was entitled to an immunity from taxation.

It goes without saying that according to well-settled rules all persons having an interest in the property at the time the bill was filed ought to have been made parties to the proceeding, and that persons so interested who were not made parties are not bound by the decree. The mortgagees in the outstanding mortgage of June 1st, 1870, were vitally interested in the determination of the question whether the property covered by the mortgage was exempt from taxation. The determination of that question would materially affect the value of their security, and they as well as the mortgagor were entitled to be made parties and to be heard in defence of their rights. I have no doubt that if the present condition of affairs was reversed—that is to say, if the decree in the Secor case had been adverse to the exemption claimed by the M., I. & N. R'y Co. and the counties were now invoking that decree as against the present complainant—it would strenuously insist that it was not bound by the decree, because it had not, either personally or by representative, had its day in court.

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The defendants herein, to wit, The Counties of Clark, Scotland, and Schuyler, have made several defences to the bill of which no mention has been made, but according to the view which the court heretofore and now takes of the case it is unnecessary to consider them. I place my judgment on the ground that the Keokuk & Western Railroad Company was not concluded by the decree in the Secor case, because it was not a party thereto and was not represented in that suit, and not being itself concluded it is not entitled to the benefit of that decree and is not entitled to have the same revived in its name and for its benefit.

The bill herein is accordingly dismissed.

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UNITED STATES OF AMERICA,
Eastern Division of the
Eastern Judicial District of Missouri, } *ss:*

I, A. P. Selby, clerk of the circuit court of the United States in and for the eastern division of the eastern judicial district of Missouri, do hereby certify the writing hereto attached to be a true transcript of the record, pleadings, and proceedings in case No. 1505 of Charles A. Secor *et al.*, plaintiffs, against James K. Singleton *et al.*, defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in the eastern

division of said district, this twenty-fourth day of March, in the year of our Lord eighteen hundred and ninety-one.

{ Seal of the United States Circuit Court, Eastern Division of the Eastern Judicial District of Missouri. }

A. P. SELBY,
Clerk of said Court,
By —— ——, *Deputy.*

Endorsed on cover: Case No. 14,541. E. Missouri C. C. U. S. No. 1078. The Keokuk & Western Railroad Company, appellant, *vs.* The County Court of Scotland County, Missouri; Benjamin F. Bourn, as collector of revenue of said county, *et al.* Filed March 28, 1891.

Office Supreme Court U. S.
FILED.
DEC 19 1893
JAMES H. McKENNEY,

In Supreme Court United States.

APPENDIX

TO THE

Briefs of the Keokuk and Western Railroad Company in Nos. 182, 183 and 414.

Opinion of the Supreme Court of Missouri, in the Case of Scotland County vs. The Missouri, Iowa and Nebraska Railway Company, 65 Mo., 123, reprinted from the official report;

ALSO

Opinion in the case of Secor vs. Singleton, 9 Fed. Rep., 809, decided by the Circuit Court of the United States for the Eastern District of Missouri, December 6, 1881, reprinted from the official report;

SUBMITTED AS

Part of the Argument of Plaintiff in Error and Appellant in cases Nos. 182, 183 and 414, to wit, the cases of the Keokuk and Western Railroad Company vs. State of Missouri, and Scotland County.

SCOTLAND COUNTY, Appellant, *vs.* MISSOURI, IOWA & NEBRASKA RAILWAY COMPANY.

1. **Taxation: Power of Legislature to grant Exemption from.** In the absence of constitutional restriction the legislature has power to grant exemption from taxation: but such exemption must be clear and unambiguous, or it will not be allowed.

2. **Corporation: Taxation; Exemption of Stock Exempts Corporate Property From.** A railroad company whose stock is by law exempt from taxation, cannot be taxed on property owned and used by it in the operation of its railway and necessary for that purpose. The stock is but the representative of the property.

3. **Railroad Charter constitutes a Contract.** A charter granted by the legislature and accepted by a railroad corporation, constitutes a contract between the State and the corporation, the obligation of which cannot be impaired by a State constitution subsequently adopted.

4. **Taxation: Legislative Exemption from: Effect of Subsequent Constitutional Prohibition against Exemptions.** The charter of a railroad company exempting the stock of the company from taxation, is not repealed by a constitutional provisional adopted after acceptance of the charter, declaring that "no property shall be exempt from taxation, except," &c.

5. **Sec. 16, Art. 11, Constitution of 1865 construed.** Sec. 16, Art. 11 of the constitution of 1865 was not designed to withdraw existing exemptions from taxation. It was intended to operate prospectively only.

6. **Scope of General Corporation and Railroad Laws of 1865.** The general purpose of the general corporation and railroad laws of 1855 (R. S. 1855, Ch. 34, p. 369, and Ch. 39, p. 404) and of the general corporation law of 1845 was to confer certain powers and privileges and impose certain duties and liabilities in the absence of any stipulations or provisions inconsistent with those, contained in special charters subsequently granted. Where such inconsistencies occur in subsequent legislation, it must be understood that previoue restrictions were intended to be removed.

7. **Taxation: Exemption from: Power of Legislature to Withdraw, Construction of Statute.** Sec. 7 of the corporation law (R. S. 1855 p. 371) declares that "the charter of every corporation that shall hereafter be granted by the legislature shall be subject to alteration, suspension and repeal, in the discretion of the legislature." Sec. 56 of the railroad law (R. S. 1855 p. 488) declares that "the legislature may at any time alter or amend this act; but

such alteration or amendment shall not impair the rights of companies previously organized." Sec. 37 (*Ib.*) declares that in future "all railroad companies shall have all the privileges contained in this act." In 1857 the legislature chartered the Alexandria & Bloomfield railroad company by a special act, which exempted the stock of the company from taxation for a term of years. *Held*, that the right of amendment reserved to the legislature was that contained in Sec. 56 only, and that the exemption could not be withdrawn after the Company had organized.

Appeal from Scotland Circuit Court—Hon. E. V. Wilson, Judge.

W. T. Kays for appellant.

By the 7th Section of Chapter 34 Art. 1 R. S. 1855, the Legislature reserved the power to alter, suspend or repeal the defendant's charter. Pacific R. R. vs. Renshaw, 18 Mo. 210; Matter of Lee & Co's. Bank, 21 N. Y. Rep. 9; Commonwealth vs. Fayette Co. R. R. Co. 55 Penn. St. 452; State vs. Person, 3 Vroom 566; 6 *ib.* 157; Angell & Ames on Corp. sec. 767. Sections 56 and 57 of the Railroad act were intended only to give the right to repeal the act of which they formed part, and to determine the effect of such repeal or alteration. The right to alter, etc., any special charter, is neither granted nor withheld by those sections. Hence this law is not repugnant to the general law embraced in chap. 34 art 1, nor does it fully embrace the whole subject matter of that law. In so far as there is any conflict between sec. 7 chap. 34 art. 1, and sections 56 and 57 of the Railroad law of 1855, it amounts to this, that the latter law limits the former in its application to corporations formed under the latter law, and the former furnishes the rule governing alterations, etc., in all other cases. Gordon's Ex. v. Mayor, 5 Gill 231; Beale v. Hale, 4 Howard 37; Broom's Legal Maxims p. 21, side page 28, 5th ed; Matter of the Reciprocity Bank, 22 N. Y. 9. *A. J. Baker P. E. Bland and Frank Hughes* for respondent

1. The exemption of the stock from taxation, exempts also the property, which the stock represents, and which is necessary to the transaction of the ordinary business of the corporation. R. R. Co. v. Mayor, 14 Geo. 279; Mayor v. Balt. & O. R. R. 6 Gill 295; New Haven v. City Bk., 31

Conn. 106 ; State v. Tums, 3 Zab. 547 ; State v. Bentley, *ib.* 532 ; Hann. & St. Jo. R. R. v. Shacklett, 30 Mo. 550 ; Augusta v. R. R. & Bk. Co., 26 Geo. 651.

2. The defendant by virtue of the consolidation, succeeds to the exemption from taxation contained in section 9 of the Alexandria & Bloomfield Railroad charter. State *ex rel.* v. Green Co., 54 Mo. 551 ; Phil. & Wil. R. R. v. Maryland, 10 How. 376 ; Tomlinson v. Branch, 15 Wal. 460.

3. Neither the Constitution, art. 11, sec. 16, nor the act of March 10, 1871, providing a uniform system for assessing and collecting taxes from railroad corporations repeals section 9 of the charter of the Alexandria & Bloomfield Railroad Company. Cooley on Const. Lim. 62, 63 ; Sedg. on Stat. and Const. Const. 167, 173, 161, note A ; Seamans v. Carter, 15 Wis. 548 ; State v. Atwood, 11 *ib.* 423 ; Finney v. Ackerman, 21 *ib.* 268 ; Garfield v. Bemis, 2 Allen 446 ; N. B. Bank v. Copeland, 7 *ib.* 140 ; Tillman v. Lansing, 4 John. 45 ; Bartruff v. Remey, 15 Iowa 257 ; Abbingdon v. Duxbury, 105 Mass. 287 ; Armstrong v. Hinds, 48 N. Y. 505 ; Ely v. Holton, 15 *ib.* 376 ; Bailey v. Major, 7 Hil. 146 ; Dash v. Van Cleek, 7 Johns. 477 ; Sayre v. Wisner, 8 Wend. 661 ; State v. Auditor 41 Mo. 25 ; State v. Macon Co. Ct., *Ib.* 453 ; McManing v. Farrer, 46 *Ib.* 376. Where an exemption by special enactment of specific property from taxation has once been established, such exemption will not be held to be repealed by implication. The intention to repeal must be clearly expressed, as was the intention to exempt. State v. Minton, 3 Zab. 529 ; State v. Bently, *Ib.* 532 ; State v. Jersey City 2 Vroom. 575 ; Williams v. Pritchard 4 D. & E. 2 ; Fosdick v. Perrysburg 14 Ohio St. 485 ; Brown & Co. Comm. 21 Penn. St. 43. Gregory's Case, 6 Coke's Rep. 19 ; Blaine v. Bailey 25 Ind. 165 ; Clark v. Davenport 14 Iowa 494 ; Burke v. Jeffreys 20 *Ib.* 145 ; Felt v. Felt, 19 Wis. 193 ; Meade v. Bagnall 15 *Ib.* 156 ; St. Louis v. Alexander 23 Mo. 483 ; St. Louis v. Indp't Ins. Co. 47 *Ib.* 146 ; Deters v. Renick 37 *Ib.* 597 ; Vastine v. Probate Court, 38 *Ib.* 529 ; State v. Miller 1 Vroom. 369.

The Legislature, by the Act of February 27th, 1875, ex-

pressly withdrew this exemption. This shows that the understanding of that branch of the Government is that direct legislation was necessary. See Smith v. Clark County, 54 Mo. 58.

4. If the Act of March 10, 1871, was intended to apply to the defendant's charter, so as to repeal the exemption from taxation, as contained in section 9, of said charter, then it is in conflict with the Constitution, in this, it impairs the obligation of defendant's contract with the State of Missouri, as contained in said 9th section of the charter.

(A) An exemption from taxation—when not prohibited by the Constitution—may be made by a State Legislature.

(b) When such exemption is contained in a charter grantd by a State Legislature to a corporation, it becomes, after the incorporators have accepted such charter, and organized under it, a contract with the State and is protected by the Constitution of the United States from alteration and repeal; UNLESS, there is, in the charter itself, or in the general law in force at the time of its adoption and acceptance, and which general law, is, by its terms, made applicable to *corporations formed under such charters*, a reserved right to make such alteration or repeal, and in the absence of any such reserved power on part of the Legislature, any alteration or repeal which has for its object the repeal of such exemption, is void, for repugnancy to the Constitution of the United States. Dartmouth College v. Woodward 4 Wheat. 518; State Bank v. Knoop, 16 How. 369; Ohio Life Ins. and T. Co. v. Debolt *ib.* 416; New Jersey v. Wilson, 7 Cranch. 164; Providence Bank v. Billings, 4 Pet. 561; Charles River Bridge v. Warren Bridge, 11 Pet. 420; Gordon v. Appeal Tax Court 3 How. 133; State v. Mansfield, 3 Zab. 510; Gardner v. State 1 *ib.* 557; Johnson v. Commonwealth 7 Dana 342; Neustadt v. Ill. Cent. R. R. 31 Ills. 484; Bank v. New Albany, 11 Ind. 139; Home of the Friendless v. Rouse 8 Wal. 430; Washington University v. Rouse, *ib.* 439.

It remains only to inquire whether the Legislature has reserved such a right to itself. And this depends on the construction to be put on sec. 7 (R. S. 1855 p. 371) and secs. 56 and 57 *(ib.* 438*)*.

The plaintiff claims that the liability of the defendant's charter to "*alteration, suspension, or repeal*," is measured by the provisions of said section 7, and that by reason of such reserved authority the Legislature on the 10th day of March, 1871, had the power to repeal the exemption from taxation contained in plaintiff's charter, notwithstanding the fact the corporation had been organized previous to such repeal.

The defendant upon the contrary claims that the Act of 1853, reenacted and amended in 1855, covers the whole field as to railroad corporations, and is the law as to them in all matters wherein there is any conflict between said Act and the Act of 1845, and that the 56th section of the Law of 1855, applies as well to railroads formed under special charters, as to those organized under the provisions of that Act.

The design indicated in sec. 57 *supra*, clearly was to place all railroads, so far as the same could be done without violation of the contract contained in their charter, on an equal footing, and that the Act, so far as it could, legally be made to do so, should apply alike to companies organized under special charters and those organized under that act.

If it is a PRIVILEGE to have exemption from taxation, and to have that immunity protected from legislative interference, then this section 57 has the effect of engrafting into the charter of every railroad company the provisions of section 56, and to protect the companies organized under special charters, from amendment after organization in such a manner as to affect any of their *rights*. That this is a privilege, see Smith vs. Clark County, 54 Mo. 58; State *ex rel.* vs. Green County Court, *ib.* 540;

The object of the State in granting this privilege must be kept in mind, viz: "To induce capital to invest in railroads which were to be constructed here, not so much with a view to furnish facilities to existing wealth and population and commerce, as to create them in a wilderness", as said by NAPTON, J., in Lackland v. N. Mo. R. R. Co. To this end it was necessary to guarantee protection to capital. Section 7, *supra*, seemed a standing menace, authorizing, as it did, a repeal of any charter. See Renshaw v. Pacific R. R. It was to remove this danger that section 56 was passed, guaranteeing vested rights in railroad corporations.

It is true that the "Act concerning corporations, at one time, covered the whole field of corporations. That was, however, before the Legislature had passed any laws classifying the different kinds of corporations, making provision for the Government of each particular class. When, however, this was done, it was an expression of the Legislative will, that, so far as this class of corporations was concerned, it should be taken from under the operation of this general law of corporations, and be governed by provisions specially applicable to its class. This railroad corporation law is as to the "Act concerning corporations" a special or particular statute in this, that it selects, from the numerous kinds of corporations covered by this latter Act, a particular class, and provides for their formation and government.

It is a general law, in so far as it applies to all corporations formed, or to be formed for the purpose of constructing and operating railroads: It is as to that class of corporations, a *revision* of, or substitute for, the law, of *corporations* and not an *amendment*, and being a subsequent statute on that subject, it repeals the first to the extent to which its provisions are revised or substituted. Tyler v. City of St. Louis, 56 Mo. 64; United States v. Tyen, 11 Wal. 88; Henderson's Tobacco, *ib.* 652; Murdock v. Memphis, 20 Wall. 590; 2 C. L. J. 135; Pierpont v. Crouch, 10 Cal. 315; Bartlett v. King, 12 Mass. 555; Nicolls v. Squire, 5 Pick. 168; Rogers v. Watrous 8 Tex. 62; Deviess v. Fairbairn, 3 How. 636; Leighton v. Walker, 15 Ills. 59; Larrabee v. Baldwin, 35 Cal. 155; Hartford Bridge Co. v. East Hartford, 16 Conn. 150;

NAPTON, J.—The points arising in this case are presented by an agreed statement of facts, which is as follows:

1st. That by an act of the General Assembly, of the State of Missouri, entitled an act to incorporate the Alexandria and Bloomfield Railroad Company, approved February 9th, 1857, the Alexandria and Bloomfield Railroad Company became and was duly incorporated, possessed of all the powers, privileges, rights, immunities, exemptions, franchises and properties, and subject to all the liabilities, obligations and restrictions mentioned in said Act. 2nd. That on the 13th day of September, A. D. 1864, said company was duly organized and directors elected, as required by

section Four of said act, and immediately said company commenced and proceeded to carry on its proper business and railroad operations, under the privileges and conditions in said Act mentioned. 3rd. That by an Act of the General Assembly entitled "An Act to amend an Act entitled an act to incorporate the Alexandria and Bloomfield Railroad Company," approved February 9th, 1857, which said amendatory act was approved February 19th, 1866, and by the due acceptance of the first section of said amendatory Act, the corporate name of said Railroad Company was changed to the Alexandria and Nebraska City Railroad Company 4th. That in pursuance of the general laws of the States of Missouri and Iowa, authorizing the consolidation of railroad companies owning, connecting railroad lines in said States, the said Alexandria and Nebraska City Railroad Company on the 3rd day of May, 1870, duly and legally consolidated with the Iowa, Southern Railroad Company, a railroad company duly organized and incorporated and existing under the laws of the State of Iowa, and that thereafter the said Alexandria and Nebraska City Railroad Company, and the said Iowa, Southern Railway Company became merged and consolidated into and formed one company under the corporate name of Missouri, Iowa, and Nebraska Railway Company, this defendant 5th. That in pursuance of the laws of Missouri, passed and approved March 10th, 1871, providing for uniform assessment and collection of taxes upon railroad companies owning railroads within this State, the president of the said Missouri, Iowa and Nebraska Railway Company made report to the Auditor of the State of the amount of completed road in the various counties in this State, and valuation thereof, belonging to said Railroad Company as required by said Act. 6th. It is further agreed that prior to the passage of said Act of March 10th, 1871, no notice was given to the President and Secretary of said Missouri, Iowa and Nebraska Railway Company, or either of them, of any intention upon the part of the legislature of said State of Missouri, to in any wise alter, amend, or repeal any of the provisions of the said Alexandria and Bloomfield Railroad Charter, nor of the said Alexandria and Nebraska City Railroad charter, nor of the said Missouri, Iowa and Nebraska Railway Charter, and it is agreed that

no notice of any kind whatever was given to the said President and Secretary by the said Legislature or any one else, of any intention on the part of the said Legislature to in any wise change or affect any of the provisions of said charters nor was any notice ever given to any of the presidents or secretaries of said Alexandria and Bloomfield or said Alexandria and Nebraska City Railroad Companies, except the provision of the Constitution of the State of Missouri adopted in 1865, to wit: section 16 art. 11 of said Constitution 7th. That the valuation of all the property owned by said Missouri, Iowa and Nebraska Railway Company, within the State of Missouri, upon said railway running from the City of Alexandria, in Clark County, to the Iowa State line between Missouri and Iowa, will not exceed $1,000,000, and that not more than that amount of stock has been issued, or existing upon said line of road. 8th. That all the property upon which the tax has been levied, and mentioned in plaintiff's petition is property necessary for the use and operation of said railway, and is used for no other purpose. 9th. That the true valuation of all property by said railway company lying in the said county of Scotland, upon which tax has been levied, is $158,115, and that said amount was duly certified by the Auditor of the State of Missouri, to the Clerk of the County Court of the said Scotland County on the 24th day of July, A. D. 1872. 10th. It is further agreed that if the court shall find that the said defendant is and was liable to pay county taxes to the said county of Scotland, for the year 1872, then the court shall render judgment against the defendant for such taxes in the sum of Two thousand three hundred and forty-seven dollars and ninety-five cents ($2,347.95), and interest thereon from December 31st, 1872, according to law. 11th. It is further agreed that if the court shall find that the said defendant is and was, liable to pay school taxes to said County of Scotland for the year 1872, in that case the Court shall render judgment for such taxes in the sum of One thousand and ninety-one dollars and sixty-six cents ($1,091.66) and interest thereon from December 31st, 1872, as provided by law. 12th. It is further agreed that nothing in this agreement shall estop the said defendant from here-

after showing any mistake which may appear in the amount of taxes as hereinbefore set forth, which the said defendant shall be held liable to pay, but the regularity of the levy and assessment made by the County Court of Scotland County and State Board of equalization shall in no wise be called in question. Given under our hands on behalf of said plaintiff and defendant, the 5th day of May, 1874.

Whereupon the plaintiff moved the court to make the following declarations of law: First, there was no consideration for the grant of the charter of the Alexandria and Bloomfield Railway Company or for the exemption from taxation claimed under the same, and that therefore there was no contract between the State and said company as to said exemption. 2nd. That by the 7th section of chapter 34 art. 1 of the Revised Statutes of 1855, the Legislature reserved the power to amend, alter or repeal the exemption from taxation claimed under said charter; and that the Legislature or a Convention called to form a Constitution for the State of Missouri, by virtue of said reservation had the power to repeal said exemption, without notice to the secretary or president of the company. 3rd. That said exemption from taxation claimed in defendant's charter was repealed by the Constitution of Missouri, adopted the 4th day of July in the year 1865, and the Act of the Legislature passed in pursuance thereof; and the said company is liable for the tax mentioned in plaintiff's petition, by virtue of the act approved March 20th, 1871. 4th that upon the agreed statement of facts in this cause, plaintiff is entitled to recover the amount of tax with interest as stated in plaintiff's petition. 5th. The section in defendant's charter exempting defendants stock from taxation for the period of 20 years from its completion, is to be strictly construed, and does not thereby exempt the real, personal, or mixed property of defendant, but at most only the stock in the hands of individual stockholders. 6th. That the defendant, by the consolidation of the Alexandria and Nebraska City Railway Company, and the Iowa Southern Railway Company did not succeed to all the rights, privileges and immunities of the Alexandria and Bloomfield Railway Company. Which motion was by the

court overruled, and to which order of court, the plaintiff at the time excepted.

And thereupon, the defendant moved the court to make the following declarations of law :

First, the charter of the Alexandria and Bloomfield Railroad Company, after the acceptance by an organization of said company under the same, constituted a contract between the State and said company for exemption from taxation for a period of 20 years from the completion of said railroad of all the property of said company necessary for the operations of said railroad, and the property sought to be taxed in this case is within the said Contract and is exempt from taxation by the plaintiff.

2nd. That the defendant by the consolidation of the Alexandria and Nebraska City Railroad Company (the old Alexandria and Bloomfield Railroad Company, and the Iowa Southern Railroad Company became entitled to exemption for 20 years as to all that portion of its railroad in this state which belonged, or would have belonged to the said Alexandria and Bloomfield Railroad, and necessary to its operations, as a railroad, and as the property in controversy pertaining to that portion of the consolidated company belonged, or would have belonged to said Alexandria and Bloomfield Railroad Company, the same is exempt from taxation, and the plaintiff is not entitled to recover.

3rd. That the Act of the Legislature under which the plaintiff asks to tax the property in controversy is unconstitutional in this, that it impairs the obligation of the contract of the state with the said Alexandria and Bloomfield Railroad Company, as to the rights, privileges, and exemptions to which the defendant succeeded by the consolidation within the meaning of section 10, article 1 of the Constitution of the United States. 4th. The Legislature did not reserve the right to alter, amend or repeal the charter of said Alexandria and Bloomfield Company after the organization of said company. 5th. If the Legislature had reserved the right to alter, amend or repeal the said charter after notice to the president or secretary, then before any amendment, alteration or repeal could be made, said notice would have to be given, and the company could not be affected except by such notice. 6th. That upon the

agreed statement of facts, the plaintiff cannot recover, and the judgment should be for the defendant. Which motion was by the court sustained, to which order the plaintiff at the time excepted whereupon the court rendered judgment in favor of defendant.

1. Taxation: Power of Legislation to grant exemption from.

It was at one time a question of considerable doubt whether a Legislature could divest itself or its successors of the power of taxation; but it may be considered as settled now that legislative bodies have the power by selecting the subjects of taxation and excluding or exempting other subjects which they have the power to tax, to hold out inducements to proposed investment of capital unless there is some constitutional restriction. The subject is referred to and somewhat discussed in the case of the State Bank of Ohio v. Knoop, 16 How. 369 and Dodge v. Wolsey, 18 Howard 331. It is agreed, on all hands, that the exemption must be clear and unambiguous. The exemption claimed in this case depends on the construction of the 9th Section of the defendant's charter adopted in 1857. That Section is as follows:

"The stock of said company shall be exempt from taxation for the period of twenty years after its completion." In accordance with the decision of this Court in the case of the H. & Cent. Jo. R. R. Co. vs. Shacklett, 31 Mo. 550 supported as it is by numerous decisions in other States it is clear that a tax on the property represented by the stock is substantially a tax on the stock. It is simply respectful to the Legislature to assume that a valuable privilege was designed to be conferred by this section, but if the exemption of the stock did not extend to the property which the stock represented the section was purely illusory.

2. Corporation taxation exemption of stock exempts corporate property from.

That the present defendant succeeded to all the privilege and liabilities of the Alexandria & Bloomfield Company is conceded. It is insisted, however, that Sec. 16, art. 11 of the Constitution of 1865 operated to repeal the exemption contained in defendant's charter. This section is as follows: "No property, real or personal, shall be exempt from taxation, except such as shall be used exclusively for public schools, and such as may belong to the United

3. Railroad charter constitutes a contract.

4. Taxation: Legislative exemption from; effect of subsequent constitutional prohibition against exemptions.

States, this State, the Counties, or to municipal corporations within the State."

It is not now maintained by any judicial tribunal that a change in the political form of civil society has the magical effect of dissolving its moral obligations or impairing contracts previously vested. Constitutional Conventions, which are of frequent occurrence in many of our States, it is believed, have no more power over vested rights than ordinary Legislatures. It must be remarked, however, that upon well settled rules of construction, this 16th Section was evidently designed to be prospective and not retrospective in its operation, and it would be an unjust imputation on the Convention which framed that Constitution to infer that they designed that section to operate upon existing rights.

5. Sec. 16 Art. 11 Constitution of 1865 construed.

Another question discussed in this case is whether the act of 10th of March, 1871, was intended to repeal the 9th Section of defendant's charter; and this leads to an examination of the principal question in the case, which relates to the construction of the 7th Section of the act concerning corporations, found in the revisions of 1845 and 1855, which declares that "The charter of every corporation that shall hereafter be granted by the Legislature, shall be subject to alteration, suspension and repeal, in the discretion of the Legislature." This general law concerning corporations consisted originally of only two articles, the first of which related to the general powers, privileges and liabilities of corporations, and the second provided modes of procedure against them. There was no statute at that time classifying corporations, and probably every private corporation in the State was created by a special act. As early as 1863, however, and certainly in the revision of 1855, this classification took place, dividing corporations into benevolent associations, fund associations, mining, manufacturing, etc., associations, plankroad associations and railroad corporations. The general statute, the 7th section of which has been copied above, was still retained in the Code. The chapter concerning railroad corporations is more extensive than either of the others, and Section 56 is as follows: "The Legislature may, at any time, alter or amend

6. Scope of general corporation and railroad laws of 1855.

this act, but such alterations or amendment shall not impair the rights of companies previously organized, or take away or impair any remedy given against such corporations, its stockholders or officers, or any liability which shall have been previously incurred." The next section is as follows: "All existing railroad corporations within the State, and such as are now or may be hereafter chartered, shall respectively have and possess all the powers and privileges contained in this act, and they shall be subject to all the duties, liabilities and provisions contained in this act not inconsistent with the provisions of their charters."

7. Taxation: exemption from: power of Legislature to withdraw, construction of statute.

It is now insisted, on the part of the plaintiff, that the charter of defendant in 1857 was subject to the 7th section of the General Act concerning corporations above quoted, and therefore subject to suspension, alteration and repeal, in the discretion of any succeeding Legislature. This position can only be maintained by the assumption that the act of 1857, which constitutes defendant's charter, is entirely consistent with this provision in the acts of 1845 and 1855, for it will hardly be contended that one Legislature can bind its successors, and if the Legislature of 1857 thought proper to disregard this provision in the Act of 1845 and 1855, there is no principle upon which such power could be questioned. The 11th section of defendant's charter provides: That "said company shall commence the construction of said road within ten years after the passage of this act, and complete the same in ten years thereafter." But Section 6 of the General Corporation Law of 1845 and 1855 it is provided that, "If any corporation hereafter created by the Legislature shall not organize and commence the transaction of its business within one year from the date of its corporation, its corporate powers shall cease". In addition to this section in the General Corporation Law, section 55 of the chapter concerning railroad corporations, provides that "If any corporation formed under this act shall not within two years after its articles of association are filed and recorded in the office of the Secretary of State, begin the construction of its road and expend thereon ten per cent. on the amount of its capital, or shall not finish the road and put it in operation in five years after

filing its articles of association as aforesaid, its corporate existence and power shall cease". This charter of 1857, it is clear, is totally irreconcilable with the provisions just quoted, for defendant was allowed by its charter ten years to commence and then ten years to complete the road. Without going into any detailed examination of the various provisions of these general laws of 1845 and 1855, it is sufficiently obvious that their general object was to confer certain powers and privileges and impose certain duties and liabilities in the absence of any stipulations or provisions inconsistent with those, contained in special charters subsequently granted. Where such inconsistencies occur in subsequent legislation, it must be understood that previous restrictions were intended to be removed, for reasons satisfactory to the Legislature. In view of the conclusion we have reached in regard to the effect of the 7th section of the General Corporation Law upon the 9th Section of defendant's charter, the question so elaborately discussed by counsel, concerning the intent of the Legislature by the act of 10th of March, 1871, seems unnecessary to be passed upon, since it is clear that whether said law was designed to include the property of defendant or not, it could not have that effect upon the facts in the agreed case. Judgment affirmed; all concurring.

AFFIRMED.

SECOR and others *v.* SINGLETON and others

(*Circuit Court, E. D. Missouri.* December 6, 1881.)

1. DEMURRER TO BILL—VERIFICATION—EQUITY RULE 31.
   A demurrer to a bill in equity should be certified by counsel to be, in their opinion, well founded in point of law, and supported by the affidavit of the defendant that it is not interposed for delay.
2. TAXATION—DECISIONS OF STATE COURTS GOVERN.
   The decision of the highest court of a state upon a question of local taxation is conclusive.
3. SAME—EXEMPTIONS.
   Where the stock of a company is by law exempt from taxation, its property cannot be taxed.
   Scotland County v. *Missouri, Iowa & Nebraska R. Co.* 65 Mo. 120.

In Equity. Demurrer.

The bill alleged that the Alexandria & Bloomfield Railroad Company was duly incorporated by an act of the general assembly of the state of Missouri, and that by a provision of its charter its stock was made exempt from taxation for the period of 20 years after its completion, which period has not yet expired; that said road ran through the counties of Clark, Scotland, and Schuyler, in the state of Missouri, to a point on the northern boundary line of said state; that said company was afterwards consolidated, under the laws of Missouri and Iowa, with the Iowa Southern Railway Company, a corporation in the state of Iowa, and has been since known as the Missouri, Iowa & Nebraska Railway Company; that by virtue of the laws of said states the consolidated company became entitled to all the privileges and immunities of the original corporations; that said Iowa & Nebraska Railway Company has no property in said counties of Clark, Scotland, and Schuyler, except its roadbed and other property used in the operation of its road; that taxes had been illegally assessed against said property, and that the defendants, the auditor of the state of Missouri, the judges of the county courts of said counties, and others, have combined to compel said company to pay taxes in said counties upon its property therein situated, and had employed attorneys to insititute and maintain suits for

taxes assessed against said property; that the complainants owned a large amount of stock in said company, and had requested the directors and officers of said company, and said company, to refuse to pay said taxes, and to take proper steps to resist the imposition of taxes upon said property, but that they had refused to take any such steps; and that said company had, through its officers, announced its intention to pay said illegal taxes. The prayer of the bill was that the taxation of said company's property should be declared illegal, and the acts of the auditor and the county officers void and of no effect; and for a writ of injunction to restrain the defendants from taking any steps towards the assessment of taxes upon the property of said road, or the collection thereof. The defendants demurred to the bill upon the ground that it set forth no ground of action or complaint against them. The demurrer was not certified by counsel to be, in their opinions, well founded in point of law, nor was it supported by the affidavit of the defendants that it was not interposed for delay.

Baker & Hughes, for plaintiffs.

Waldo P. Johnson and *H. A. Cunningham*, for defendants.

TREAT, D. J. A so-called demurrer was filed to the amended bill in this case on April 1, 1880, not in conformity with rule 31, United States supreme court. The plaintiff might have moved, therefore, more than a year ago, for a decree *pro confesso* as to said demurrants. That so-called demurrer is now submitted and overruled. An examination of the case satisfies the court that if said demurrer had conformed to the rules, it would not have been well taken. It was interposed, obviously, for mere delay, inasmuch as the only legal question involved had been decided, as set out in the bill, (65 Mo. 123,) adversely; which decision this court recognizes as conclusive on a question of state taxation.

To the amended bill, filed January 7, 1880, only one answer has been filed, which is a general denial, couched in the form of an answer to a law action in the state court, and not sworn to. No replication thereto has been filed; so the

case has been suffered to float. More than a year ago the plaintiff could have had, by proper motion, a decree *pro confesso*: (1) Because the so-called demurrer was no demurrer in conformity with the rules of the supreme court; and, even if it were, it was not well taken, under the conclusive rulings of the supreme court of Missouri. (2) Several of the defendants had interposed no answer to the amended bills. (3) The only defendant purporting to answer, interposed merely a general denial of the allegations of the bill, to which there should, possibly, have been a *pro forma* replication. Such practice as a general denial in form of a general issue is wholly unknown in equity; and, whether allowable or not, the case might have been set down for hearing on the pleadings, with such evidence as had been presented within the time prescribed for taking the same. If such a denial as to Holliday puts the party to a formal replication and proofs, the said defendant could, on motion, have the case dismissed as to him. But the manner in which these faulty proceedings have been pursued induces the court to permit, on terms, further action to be had, so far as the same may pertain to the merits, and no further.

The demurrer will be overruled, at the cost of the demurrants. Plaintiffs may take such further action as they may deem necessary

1 In the Supreme Court of the United States, October Term, 1893.

THE KEOKUK AND WESTERN RAILROAD COMPANY, Appellant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI, *et al.*, Appellees.

Record, Case No. 14152. Term No. 183.

THE KEOKUK AND WESTERN RAILROAD COMPANY, Appellant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, Missouri; Benjamin F. Bowen, as Collector of Revenue of said County, *et al.*, Appellees.

Record, Case No. 14541. Term No. 414.

It is stipulated and agreed by and between the appellant and the county court of Clark county and O. S. Callahan, collector, appellees, as follows, to wit:

1st. That both the above causes may be argued and submitted together at the call of the first named.

2d. That on the trial of each of said cases in the circuit court all the exhibits, deeds, conveyances, and other documents printed
2 in the record of the cases No. 183 and 414 were formally offered and read in evidence before the court, and that the same should appear in the record as proofs or evidence in said causes.

3d. That in the trial of said last-named cause in the circuit court the record and proceedings in said first above-entitled cause theretofore determined in the circuit court for the northern division of the eastern district was regularly offered and read in evidence by the said Clark county court and its collector, and same should appear in the record herein as part of the proofs, and that this court may consider the record and proceedings in said cause as fully and with like effect as if embraced in the record of said last-named cause.

4th. That the above-named causes may be heard at the same time that case No. 182, Keokuk & Western Railroad Co., plaintiff
3 in error, *vs.* The State of Missouri *ex rel.* William H. Wine, collector, defendant in error, is submitted.

F. T. HUGHES,
Solicitor for Appellant.
F. L. SCHOFIELD,
Solicitor for said Appellees.

4 [Endorsed:] Case No 14,152. Supreme Court U. S., October term, 1893. Term No., 183 & 414. The Keokuk & Western R. R. Co., app't; *vs.* The County Court of Scotland Co., Mo., *et al.*, & Same *vs.* County Court of Scotland Co., Mo., *et al.* Stipulation to amend record & to argue cases together & with No. 182.

[Stamped:] Office Supreme Court U. S. Filed Dec. 13, 1893. James H. McKenney, clerk.

Office Supreme Court U. S.
FILED.
DEC 18 1893
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1890.

TERM No. 182.

THE KEOKUK AND WESTERN RAILROAD COMPANY,
Plaintiff in Error,
vs.
THE STATE OF MISSOURI, at the relation of WILLIAM H. WINE, Collector.

IN ERROR TO THE SUPREME COURT OF MISSOURI.

Statement and Brief for Plaintiff in Error.

JOHN F. DILLON,
FELIX T. HUGHES,
THOMAS DE WITT CUYLER,
For Plaintiff in Error.

C. G. Burgoyne, 146-150 Centre St., N. Y.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 182.

THE KEOKUK AND WESTERN RAILROAD COMPANY,
Plaintiff in Error.

No. 182. vs.

THE STATE OF MISSOURI, at the relation of WILLIAM H. WINE, Collector.

IN ERROR TO THE SUPREME COURT OF MISSOURI.

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR.

JOHN F. DILLON,
FELIX T. HUGHES,
THOMAS DE WITT CUYLER,
For Plaintiff in Error.

The precise question involved in this case has, as we shall see, been once decided by the Supreme Court of Missouri, and also by the United States Circuit Court for the Eastern District of Missouri against the State and county and in favor of the railroad company,

and just as the present plaintiff in error claims on this record that it ought to have been decided by the Supreme Court of Missouri (which went back on itself), and as it will insist that it ought now to be decided by this Court.

The record presents a strange case indeed. The Supreme Court of Missouri held the company was exempt, and the Federal Circuit Court said so and enjoined the railroad company from paying any such taxes, and now, after many years, the plaintiff in error, an innocent purchaser, is required to pay all such taxes with multiplied and oppressive penalties. Surely the law should be very strongly in favor of defendant in error to sustain such a result.

Statement of the Case.

Suit was brought in the State Court, August Term, 1887 (Record, p. 36), by the defendant in error as Collector of Revenue for Scotland County against the plaintiff in error the *Keokuk and Western Railroad Company* to charge the property then in its hands as owner, with the alleged lien of the State and County for the taxes in question, which it was claimed were levied for the year 1886 against the property of the *Missouri, Iowa and Nebraska Railway Company*, at that time the owner and in control of such property. Only the taxes for 1886 are here in question, and these were levied on the property of the said last-named railway company. They were not levied against the Keokuk and Western Railroad Company.

The Keokuk and Western Railroad Company (plaintiff in error) acquired the property of the Missouri, Iowa and Nebraska Railway Company in December,

1886, through a sale thereof under a supplemental decree of foreclosure rendered July 8th, 1886 (Record, p. 37), and by other deeds of conveyance made by the Missouri, Iowa and Neb. Ry. Co., and by the Central Trust Company of New York.

[NOTE—On page 33 of the printed record the Court will observe that pursuant to a writ of *certiorari* the Clerk of the Supreme Court of Missouri sent a complete and perfect transcript of the record. This will account for the duplication of parts of the record herein. We shall refer to pages of the perfect transcript, commencing at page 32 and extending through the rest of the printed record.]

The Keokuk and Western Railroad Company by its answer denied the right of the Collector to enforce the alleged lien for such taxes for the reason that the property was exempt from taxation while owned and controlled by the said Missouri, Iowa and Nebraska Railway Company, against which the tax was levied. The Keokuk and Western Railroad Company claimed that the Missouri, Iowa and Nebraska Railway Company was entitled to such exemption as successor by consolidation of the Alexandria and Nebraska City Railroad Company—formerly the Alexandria and Bloomfield Railroad Company, which had, by legislative act, changed its name to that of the former—with the Iowa Southern Railway Company under an act of the General Assembly, of the State of Missouri of date March 2, 1869, authorizing a railroad company of Missouri to consolidate with a railroad company of an adjoining State when the tracks shall connect at the State line (Acts 1869, p. 75). This act in terms continues to the consolidated company ALL the franchises and privileges of the consolidating company in the State. Sec. 4 is as follows:

"Any such consolidated company shall be subject to ALL the liabilities and bound by ALL the obligations of the company within the State, which may be thus consolidated with one in an adjacent State as fully as if such consolidation had not taken place, and shall be subject to the same duties and obligations to the State, and be entitled to the SAME FRANCHISES AND PRIVILEGES UNDER THE LAWS OF THIS STATE AS IF THE CONSOLIDATION HAD NOT TAKEN PLACE."

For the convenience of the Court we reprint in full as an Appendix to this Brief the said Act of March 2, 1869.

The Alexandria and Bloomfield Railroad Company was chartered by special act of the General Assembly of Missouri, approved February 9th, 1857 (Acts 1857, p. 94). The railroad authorized by it was:

"A railroad from the City of Alexandria, in the County of Clark, in the direction of Bloomfield, in the State of Iowa, to such point on the northern boundary line of the State of Missouri, as shall be agreed upon by said company, and a company authorized on the part of the State of Iowa to construct a railroad to intersect the road authorized by the provisions of this act at the most practicable point on said State line."

The Ninth Section exempted the stock from taxation for twenty years after completion, and was as follows:

"The stock of said company shall be exempt from taxation for the period of twenty years after its completion."

It is settled that this charter was not effected by the Constitution of 1865, and that the Legislature could not withdraw the tax exemption after the company was organized (Scotland County vs. Mo., Iowa & Neb. Ry. Co., 65 Mo., 123, 1877). The Supreme Court of Missouri recognize the above propositions in its opinion in the case now under review (Record, p. 65).

By a long and unbroken line of decisions in Missouri, commencing with H. & St. Joe R. R. Co. vs. Shacklett, 30 Mo., 550, decided A. D. 1860, never overruled and never questioned, this exemption included the property of the company represented by the stock (Scotland Co. vs. Mo., Iowa & Neb. Co., 65 Mo., 123), with which on this point the Supreme Court of Missouri in this very case says it is "satisfied" (Printed Record in this case, p. 65). By the said Charter of February 9, 1857, work was to commence within ten years, and the road to be completed within ten years thereafter, Work was commenced in 1864 and the road completed in 1872 (so admitted, Record, p. 48, and so admitted in a former brief of opposing counsel), which, by the terms of the charter, would continue the exemption until 1892.

We may say here that the plaintiff in error, the Keokuk and Western R. R. Co., having purchased the property under foreclosure of mortgage in December, 1886, makes no claim to the exemption from that time until 1892, but is paying its taxes each year as they mature. No perpetual exemption is claimed—no exemption is claimed for any year subsequent to the year 1886, when the present plaintiff in error bought the property. The only question in this case is as to the year 1886, and the only controversy between the parties is as to the year 1886 and certain preceding years.

In addition to the foregoing chartered privileges the defendant in its answer by way of estoppel and as *res judicata* of the questions at issue (p. 29, printed record), pleaded—

"that at the April Term, 1873, of said Circuit Court of Scotland County, Missouri, plaintiff herein

brought suit against the said Missouri, Iowa and Nebraska Railway Company as defendant to recover certain state, county and municipal taxes alleged to be due and payable for the year 1872 on the railway property described in the petition herein. That to said suit the said Missouri, Iowa and Nebraska Railway Company appeared and made answer, alleging, among other things, that the said railway company was not liable to pay said taxes or any part thereof by reason of the exemption contained in said Section 9 of the said Alexandria and Bloomfield Railroad charter, and thereafter such proceedings were had in said cause in said Court that the said Court sustained the answer and rendered final judgment in favor of said railroad company. The said Circuit Court holding and deciding that the said Section 9 of the said Alexandria and Bloomfield Railroad charter did exempt the property of the said Missouri, Iowa and Nebraska Railway Company described in the petition therein from all taxes, whether state, county, municipal or otherwise, for the period of twenty years after completion. That thereafter such proceedings were had in said cause that on appeal to the Supreme Court of Missouri the judgment of the said Scotland County Circuit Court was in all things affirmed. The report of said cause is found in 65th volume, at page 123 of the Missouri Supreme Court Reports" (Record, p. 39).

THE ANSWER ALSO SET UP an injunction suit in the United States Circuit Court known as the Secor suit, enjoining by the final decree of the Court Scotland County and the two other Counties of Clarke and Schuyler from collecting taxes on the same property for the year 1881 (reported in 9th Fed. R., p. 809), and specially pleaded that all the questions had been litigated and the plaintiff estopped by judgment of record (Record, pp. 39, 40).

THE ANSWER FURTHER ALLEGED that the Keokuk and Western Railroad Company acquired the property, relying upon the fact that said property was not liable for such taxes (Record, p. 40). These facts set up in

the answer were not denied; the legal effect thereof was alone controverted.

It was agreed on the trial of the present cause that the statement of facts as set forth in the statement and opinion of the Supreme Court of Missouri, in the former cause, as found in 65th volume, commencing at page 123 of the Missouri Supreme Court Reports, contains all the facts in that cause on which that cause was tried and decided (p. 55 printed record).

The Circuit Court of the County on the decision of the present cause denied the exemption claimed by the defendant (the present plaintiff in error), and rendered judgment against it for the taxes and penalties in question, which judgment was affirmed on appeal by the Supreme Court of the State (reported 99 Mo., 30); and, after an unsuccessful motion for rehearing (p. 70, printed record), plaintiff brings the case here on writ of error to the Supreme Court of Missouri, to review and reverse the judgment of that Court as reported in 99 Mo., 30; opinion therein reprinted in the present record at pp. 64–70.

Assignment of Errors.

1. The Supreme Court of Missouri erred in rendering the judgment of affirmance November 4, 1889 (Record, p. 63).

2. The said Court erred in holding and adjudging the property and railroad acquired and owned by the plaintiff in error liable to taxation for the year 1886, and in not holding and adjudging that said property and railroad were exempt from taxation by virtue of the Act of February 9, 1857, and the legislative contract therein contained, and by virtue of the judgment in the suit of Scotland County vs. The Mo., Iowa and Neb. Ry. Co., pleaded in the answer and reported in 65 Mo. Rep., 123, and by virtue of the decree in the

suit of Secor *et al.* vs. Scotland County *et al.*, pleaded in the answer and rendered by the U. S. Circuit Court for the Eastern District of Missouri, and reported 9 Federal Reporter, page 809.

3. The said Court erred in each and every of the respects set forth in the petition of the plaintiff in error for a writ of error to this Court, which said petition is contained at large in the printed record of this cause at pages 74 to 76 inclusive, and is made part of this assignment of errors.

4. The said Court erred in sustaining the validity of the State statutes and each of them set forth in said petition for a writ of error as applied to the property and railroad of the plaintiff in error, and in holding and adjudging that the said statutes or any of them had the effect to deprive the plaintiff in error of the benefit of said legislative contract of exemption contained in Section 9 of said Act of February 9, 1857, and in holding and adjudging that said property and railroad were subject to taxation for the year 1886.

Constitutional Provisions.

The provisions of the Constitution of Missouri, adopted in 1865, which become material in the consideration of the questions here involved, are as follows:

"Art. 11, Sec. 16. No property, real or personal, shall be exempt from taxation, except such as may be used exclusively for public schools, and such as may belong to the United States, to this State, to Counties or Municipal corporations within this State."

"Art. 4, Sec. 27. The General Assembly shall not pass special laws * * * exempting any property of any named person or corporation from taxation."

"Art. 8, Sec. 4. Corporations may be formed under general laws, but shall not be created by special acts, except for municipal purposes."

"Art. 11, Sec. 14. The General Assembly shall not authorize any county, city or town to become a stockholder in or loan its credit to any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town, at a regular or special election to be held therein, shall assent thereto."

"Art. 11, Sec. 3. All statute laws of this State now in force, not inconsistent with this constitution, shall

continue in force until they shall expire by their own limitation, or be *amended* or repealed by the General Assembly."

It seems this contemplated line was to pass through the three northeast counties of Missouri, and probably with a view to have the Eastern terminus in the latter State. The Legislature authorized the counties and towns along the contemplated route to aid the enterprise in the way of municipal subscriptions to its stock, and the State also gave it the above-mentioned twenty-year exemption from taxation after completion.

ARGUMENT.

May it please the Court:

WE CLAIM:

1st. That by the consolidation above mentioned the exemption from taxation of the Alexandria and Bloomfield Company continued to and vested in the Missouri, Iowa and Nebraska Railway Company, and the judgment under review of the Supreme Court of Missouri holding the contrary, gives effect to a law of the State which is in violation of the Constitution of the United States, and impairs the obligation of contract.

2d. That the decisions of the State and Federal Courts of Missouri, on the questions involved, were so firmly established and acquiesced in by all parties prior to the decision under review as to constitute a rule of property equally protected by the Constitution of the United States, and especially so in the case at bar,

where the decisions are sought to be changed so as to charge the property in the hands of an innocent purchaser.

3d. Because the questions herein involved were decided in the cases in the 65th Mo. and 9th Fed. Reporter, and work an estoppel against the State as *res adjudicata*, and the Keokuk and Western Railway Company is thus equally protected by the Constitution of the United States.

4th. Because the consolidation act of March 2, 1869, was but amendatory and in "perfect accord" with the original act of incorporation, and was contemplated in it and became a part of it.

A.

In framing the provisions of the Constitution above quoted the people of Missouri had in view, among other things:

1st. The prohibition of future legislative grants exempting property from taxation, and also the prohibition of future grants of authority to municipal corporations to subscribe stock in or loan their credit to private corporations, except as authorized by a two-thirds vote of the people.

2d. It is equally clear, from Sec. 3, Art. 11, of that instrument, quoted *supra*, and the decisions of the Courts of the State, that all laws and existing grants of the kind were not to be affected, but were to continue in force, and that the Legislature should be as

competent to amend existing laws by special acts or general laws made applicable thereto after the adoption of the Constitution, as before, with the one saving clause, that, in so amending, the Legislature *could not exempt property from taxation not already exempt, or authorize municipalities not already authorized to loan their credit or take stock in private corporations except upon the prescribed vote.*

The question came before the Supreme Court of the State as early as 1867 in *State ex rel., &c., vs. Macon Co. et al.*, 41 Mo., 453. That Court, construing Sections 3 and 14 of Article 11 of the Constitution (quoted *supra*), held the provisions of Section 14 as a limitation upon the *future* power of the General Assembly, and that it was not intended to retroact so as to have any controlling applications to laws in existence when the Constitution was adopted. It was also held, the law does not favor the repeal of statutes by implication, and that the power of the county in that case to contract for stock in the railroad without a precedent vote was not repealed by the Constitution.

Next, in 1871, came the question of *special legislation amending* the charter of the *Cape Girardeau and State Line R. R. Co.*, which was in existence prior to the adoption of the Constitution in 1865. The amendatory act was passed in 1869, and authorized the company to build a new line of road, and it was claimed this amendment could not be authorized under the above-mentioned provisions of this Constitution, but the Supreme Court (*State vs. Cape, &c., R. R.*, 48 Mo., 468) held otherwise. His Honor Judge WAGNER, in the opinion on page 471, says:

"In Art. 11, Sec. 3, it is declared that 'all statute laws of this State now in force not inconsistent with

this Constitution shall continue in force until they shall expire by their own limitation or be amended or repealed by the General Assembly.' In this section the Constitution makes express provision and clearly delegates the power to the Legislature to amend all laws in force prior to the time the Constitution went into operation. As this charter was granted previous to that time I think it was properly subject to amendment."

He further says:

"The Supreme Court of this State will never declare an Act of the Legislature invalid unless in their judgment its nullity and invalidity are placed beyond a reasonable doubt. It is presumed that they are constitutional unless they manifestly infringe on some provision of the Constitution."

To the same effect are:

State vs. Coffee, 59 Mo., 59.
Atlantic, &c., R. R. vs. St. Louis, 66 Mo., 228.

Such being the settled law of Missouri, no one will question the power of the Legislature so to *amend* an existing railroad charter, either by special enactment or general law made applicable thereto, as to authorize it to consolidate with another railroad and to continue to such consolidated company all existing rights and privileges, unless expressly or by necessary implication it is prohibited, and the same rules of construction will apply in this case in support of the constitutionality of such acts as in other cases.

There is not a word in the Constitution of Missouri which forbids the Legislature from authorizing the continuation of such rights, privileges and exemptions possessed by a corporation existing prior to the Constitution to a corporation thereafter formed by the

consolidation of such corporation with others, and certainly nothing inconsistent with such right. If this be so it cannot make the slightest difference whether the effect of a consolidation under the Missouri law is to create a new corporation or continue in force in such State the two old ones under a new name. The latter, however, seems to be the effect under the said Consolidating Act in question, of date March 2, 1869.

Muller vs. Dows, 94 U. S., 444.

It was the rule of law long before the Missouri Constitution was adopted that mere legislative authority to consolidate two or more railroads into one, even though such consolidation worked a dissolution of the old companies and the creation of a new one, was presumably to continue in force and pass all rights and privileges, *including exemption from taxation*, to such consolidated company to the same extent and effect as they existed prior thereto in the old ones.

Philadelphia, Wilmington & Baltimore R. R. Co. vs. Maryland, 10 How., 376, A. D. 1850; Tomlinson vs. Branch, 15 Wall., 460.

And such is the settled law of this Court.

In *Tennessee vs. Whitworth*, 117 U. S., 145, Mr. Chief-Justice WAITE says:

"As early as 1850, before either the charter of Tennessee and Alabama Co. or that of the Central Southern Company was granted, this Court said in *Philadelphia, Wilmington and Baltimore R. R. Co. vs. Maryland*, 10 How., 376, 393, speaking by Mr. Chief-Justice TANEY, a statute which authorized the union of two railroad companies and secured to the united company the 'property, rights and privileges which that law or other laws conferred on them (the separate companies) or either of them, *extended to the united company an exemption from*

taxation in the charter of one of the uniting companies, and this, although it was at the same time said that the taxing power of a State is never presumed to be relinquished unless the intention to relinquish is declared in clear and unambiguous terms." Saying further: "This has been expressly affirmed in *Tomlinson vs. Branch*, 15 Wall., 460," citing numerous authorities.

Such being the known rule of construction, the framers of the Constitution of Missouri in 1865, had they intended to prohibit the Legislature from authorizing the transfer by consolidation or otherwise from one company to another of existing rights and privileges, such as exemptions of property from taxation, or authority in counties, cities and towns to subscribe stock without a precedent vote, they would have said so in unmistakable terms. Not having said so, the authority of the Legislature continues as fully afterwards as before.

Under the Constitution as thus written and construed the Legislature passed the above-mentioned Act of March 2, 1869, authorizing the consolidation in question (*For text of said Act, see Appendix hereto*). It purported on its face to continue as an existing privilege the tax exemption enjoyed by any one of the consolidating companies, and, as expressly held by the Supreme Court of Missouri, *Scotland County vs. Missouri, Iowa and Nebraska Railway Company*, 65th Mo., 123 (1876), and by the United States Circuit Court in *Secor et al. vs. Singleton*, 9 Fed. Rep.. 809 (1882), the exemption did pass unaffected in the consolidation in question. And such also would have been the decision of the Supreme Court of Missouri in the present case, had it not been, in the opinion of the Court, impossible under the Constitution of 1865 (Printed Record, p. 65),

Then on March 24th, 1870, came a general law authorizing consolidations, sales, leases, extensions, &c. (Wagner's Mo. Stats. 1870, p. 314). This law in terms conferred on the consolidated company "all the powers, rights, privileges and immunities" of the constituent companies, and it is clear that in framing this law the Legislature understood exemption from taxation would be continued under any of the provisions, and added a saving clause that:

"If a railroad company of another State shall lease a railroad, the whole or a part of which is in this State, or make arrangements for operating the same as proaided in this act, * * * such part of said railroad as is within this State shall be subject to taxation."

This law stands unquestioned upon the statutes of the State to-day, having passed through the General Revisions 1879 and 1889 (R. S. 1879, p. 134; R. S. 1889, p. 647); then in 1885 (Laws 1885, p. 220). The Legislature further recognized the rule by providing in the said Act of 1885, in case a railroad company having exemption of its property from taxation should consolidate with one not having such exemption, the part liable should be taxed separately.

With this presumption in favor of the constitutionality of these laws and the decisions above referred to, it would seem useless further to discuss the question whether or not there is a Federal question involved in this case.

See

Louisville, &c., R. R. Co. vs. Palmes, 109 U. S., 256; and cases cited on pages 256, 257.

Tennessee vs. Whitworth, 117 U. S., 139.

The former decision of the Missouri courts and of

this Court, in our opinion, leave no room for doubt as to the correctness of the conclusions reached in Scotland County against this consolidated company, in 65th Mo. R., *supra*. It will not do to say that the effect of the consolidation was in that case conceded away, and therefore cannot work an estoppel as *res judicata* or rule of property. The Court will observe that counsel for the company in that case claimed that the Missouri Court, in *State vs. Green County*, 54 Mo., 540, in accordance with the rule of this Court in the cases in 10th How. and 15 Wall., *supra*, had before that time settled the effect of the consolidating act, and that it was not then an open question in that Court, and the Court seems to have so regarded it; and in this view to have stated that "it is conceded," *as a rule of law*, that the exemption continued to the consolidated company.

The opinion will further show that counsel in the Court below in that case claimed in the answer of the railway company that the effect of the consolidation was to continue and keep alive the privilege of exemption, and therefore the property was not liable for the taxes sued for, and asked an instruction of the Court to that effect, which the Court gave. The case is, therefore, *res adjudicata* of every issue made in the pleadings.

Freeman on Judgments, Sec. 249.
Cromwell vs. Sac County, 94 U. S., 351.
Garwood vs. Garwood, 29 Cal., 251.
Hickerson vs. Mexico, 59 Mo., 61; 59 *Id.*, 355.

The effect of the *Secor* decree (9 Fed. Rep., 809) pleaded in the answer in this case, and of the judgment in *Scotland County vs. M., I. & N. Ry. Co.* (65 Mo., 123), also pleaded in the answer in this case, was to

establish as *res adjudicata* that the property of the Missouri, Iowa and Nebraska Railway Company was exempt from taxation so long as it remained the property of that company down to the year 1892. As these cases decided that the property was thus exempt, they necessarily decided that *no lien could exist for taxes* levied during the ownership of such property by that company down to 1892. These cases decided that there could be no lien, as much as if the suits had been suits specifically to enforce a lien, and the Courts had held that no lien existed. These were decisions upon which any subsequent purchaser of the property had a right to rely, and of which he could avail himself in any suit brought to enforce an alleged lien against him or against the property in his hands. This is within the reason and principle of the case of *Gelpcke vs. Dubuque*, 1 Wall., 206.

The present suit to collect taxes for the year 1886, while the road was owned by the Missouri, Iowa and Nebraska Railway Company, is a proceeding to enforce a lien which it then stood adjudged cannot exist. The Missouri Supreme Court and the Federal Court had both decided that there was no lien, and could be none, during the time when the road was owned by that company, down to 1892. These were adjudications on which the Keokuk and Western Railway Company, as the subsequent purchaser of the road, had a right to rely, and did rely, that at the time of such purchase the road was free from liens for taxes as against the Missouri, Iowa and Nebraska Railway Company.

As to the erroneous statement that in Scotland County vs. M., I. & N. Co., 65 Mo., 123, it was "conceded that the M., I. & N. Co. succeeded to the exemption of the Alexandria and Bloomfield Company," it is sufficient that the judgment was rendered. Even a consent

decree or judgment is as much *res adjudicata* as any other. The only thing that can be done to impeach a consent judgment or decree is to set it aside for fraud in procuring it. But this was not a consent judgment. The most that can be said is that the point that the M., I. & N. Ry. Co. did not succeed to all the rights of the Alexandria and Bloomfield Company is not discussed in the Court's opinion. It was within the pleadings; it was of the essence of the controversy made therein; it was distinctly ruled on by the Court below; the case could not have been decided by either Court without deciding it; and, therefore, on well-known and uncontested principles, the judgment which was rendered binds, and is an estoppel as to all questions which were thus within the pleadings and raised on the record (see Report, 65 Mo., pp. 125, 126, 132, 133).

The Supreme Court of Missouri in its opinion in the case under review (99 Mo., p. 30) entirely overlooks the fact that the case of *Secor vs. Singleton* of necessity passed directly upon the effect of the consolidation now in question, and there were no concessions of counsel or Court claimed in that case.

It is, of course, not material that the taxes sued for here are for a different year; the doctrine of *res adjudicata* applies none the less. All the questions which were made in the pleadings and passed upon by the Courts in these cases are *res adjudicata*, and the effect of this consolidation was among them.

Cromwell vs. Sac County, 94 U. S., *supra*.

That the decision of the Missouri Supreme Court in *Scotland County vs. M., I. & N. Ry. Co.*, 65 Mo., 123, and the decision of the Federal Court in *Secor vs. Singleton*, 9 Fed. Rep., 809, are *res adjudicata* and con-

stitute an estoppel, as to the question involved in this case, see

Gray vs. Dickinson, 13 So. W. Rep., 209,
and
Bissell vs. Spring Valley Township, 124 U. S., 225.

The case in 54 Mo., *State vs. Green County* (which, as we have shown, passed upon the effect of a consolidation after the Constitution of 1865) and the Scotland County case (65 Mo., p. 123) deciding that this property was exempt under the charter and consolidation in question, were followed by *State vs. Garroutte*, 69 Mo., 151.

In the last-named case *(State vs. Garroutte)*, while Court and counsel conceded that under the acts authorizing the consolidation of railroads, all rights passed to the consolidated company, notwithstanding the Constitution of 1865, yet it was then claimed that the right to take stock in a railroad company without a precedent vote was not a vested right. The Court sustained that view of the case, but said, in reference to such questions as that involved in the present case (citing the same cases in 10 How. and 15 Wall.):

"The keeping alive of the rights and privileges of the company and transferring them to the new company, in connection with the property, indicates the legislative intent that such property was to be holden in the same manner, and subject to the same rights as before. The owners were to lose no rights by the transfer, nor was the public to lose any rights thereby."

So much is quotation from the Tomlinson case (15 Wall.); next the Missouri Supreme Court says:

"Chartered exemption from taxation has always been deemed a vested right incapable of revocation or abrogation by the Legislature or by consolidation in consequence of legislative action or authorization."

Next, in 1878 (County of *Scotland vs. Thomas*, 94 U. S., 682), the same question came before this Court on the *very charter and consolidation now in question*, and it became necessary for the Court to determine the effect of the Constitution of 1865. Mr. Justice BRADLEY, in delivering the opinion of the Court at page 689, cited and relied on the Greene County case in 54 Mo., and the Maryland and Tomlinson cases in 10 How., and 15 Wall., saying:

"That where a consolidation is effected between two railroad companies, and nothing to the contrary is indicated, the rights and privileges as well as the duties and liabilities of each continue to exist as before in the hands of the new organization. It seems to us that this decision, in the Greene County case, governs the present case."

Then again, on page 693:

"Why it should not still attach to this portion of the road as one of the rights and privileges belonging to it, into whose hands soever it comes by consolidation or otherwise, it is difficult to see. The principles laid down in the case of the Philadelphia, Wilmington and B. R. R. vs. Md., 10 How., 376, and Tomlinson vs. Branch, 15 Wall., 460, and recently affirmed in Branch vs. City of Charleston, 92 U. S., 677, seem to us directly applicable."

Again, in speaking in reference to the power to amend charters granted prior to the Constitution of 1865, and observing that the amendment in this case authorizing the consolidation but served to carry out the original purpose of the charter and was in perfect accord with it, Justice BRADLEY said (p. 690):

"It would seem clear, therefore, that alterations of the charter were admissible and would not affect rights of the company untouched thereby. * * * The power to amend thus existing, the amending acts in this case do not subvert the original purposes of the

charter, but rather carry them out and perfect them. The railroad authorized by it was 'a railroad from the City of Alexandria, in the County of Clark, in the direction of Bloomfield, in the State of Iowa, to such point on the northern boundary line of the State of Missouri, as shall be agreed upon by said company, and a company authorized on the part of the State of Iowa, to construct a railroad to intersect the road authorized to be constructed by the provisions of this act, at the most practicable point on said State line.'

" Bloomfield was a small town in Iowa, evidently not intended as the final objective point of the proposed line, which is only required to be 'in the direction of Bloomfield.' A connection with a continuous road in Iowa was the declared object of the road proposed. It was evidently the purpose to bring Alexandria, a port of Missouri on the Mississippi River, in connection with the rich region of Southern and Western Iowa by means of the road then being chartered, and a road to connect therewith, running into the State of Iowa. The purpose will be most effectually attained by the construction of the continuous line contemplated by the consolidated companies. The general direction of the road is not changed. It does not pass through Bloomfield, it is true; but it does not pass it by so far as to be a substantial departure from the route originally indicated.

" The amending act, therefore, which authorized a consolidation with the Iowa Southern Railway Company, and thereby constituted the Missouri, Iowa and Nebraska Railway Company, was in perfect accord with the general purpose of the original charter of the Alexandria and Bloomfield Railroad Company; and if the other rights and priviliges of the latter company passed over to the consolidated company, we do not see why the privilege in question should not do so, nor why the power given to the county to subscribe to the stock should not continue in force."

The Consolidation Act, being but an amendment " in perfect accord," became a part of the original Incorporation Act, and certainly to accept it would not destroy the exemption from taxation.

The same questions again came before this Court in regard to bonds issued by Schuyler County, Missouri, to this consolidated company, and the Court said *(County of Schuyler vs. Thomas*, 98 U. S., 175*)*:

"That the company might establish a location and change it by authority of the Legislature. That it might be authorized to build a branch or extension in furtherance of its general object as originally chartered. That this might be, and was, accomplished by a new organization, to which, as transferee of the original privileges, the right to receive and of the county to make subscriptions pertained. That their powers were legitimately exercised is plain upon the authorities cited."

To the same effect were later decisions on the same bonds:

Scotland County vs. Hill, 132 U. S , 107.
And Same vs. U. S. *ex rel.* Hill, 140 U. S., 41.

Bank of Portsmouth vs. Livingston County, 128 U. S., 102, reviews all the cases on this point and coming under the laws for consolidation of the railroad here in question. The Court says:

"1st. As to the authority for consolidation: It was enacted as follows by the Act of the Legislature of Missouri, approved March 2, 1869, entitled 'An Act to authorize the consolidation of railroad companies in this State with companies owning connecting railroads in adjoining States' (Laws 1869, p. 75, and 1 Wag. St. Mo., 1872, p. 314, par. 56):

"'SECTION 1. That any railroad company organized under the general or special laws of this State, whose track shall at the line of the State connect with the track of the railroad of any company organized under the general or special laws of any adjoining State, is, hereby authorized to make and enter into any agreement with such connecting company for the consolidation of the stock of the respective companies whose tracks shall be so connected, making one company of

the two, whose stock shall be so consolidated, upon such terms and conditions and stipulations as may be mutually agreed upon between them, in accordance with the laws of the adjoining State in which the road is located with which connection is thus formed.' The statute then went on to enact details in regard to the consolidation. The fourth section of the act provided as follows: 'SEC. 4. Any such consolidated company shall be subject to all the liabilities and bound by all the obligations of the company within this State which may be thus consolidated with one in the adjacent State, as fully as if such consolidation had not taken place, and shall be subject to the same duties and obligations to the State and be entitled to the same franchises and privileges under the laws of this State as if the consolidation had not taken place.' This statute applied to the consolidation in question, although no road had yet been constructed. It is not contended that the provisions of this statute were not complied with in making the consolidation in question.

"The consolidated company was, by the statute, to be entitled to the same privileges under the laws of the State of Missouri as if the consolidation had not taken place. This can only mean that it was to be entitled to the same privileges under the laws of Missouri that the Missouri corporation was entitled to under the laws of that State at the time the consolidation took place.

"One of those privileges was the privilege of a subscription to stock by the Township of Chillicothe."

Tennessee vs. Whitworth, 117 U. S., 149, becomes a leading case in this Court on the subject of consolidation of railroads and the effect upon tax exemptions in one or more of the constituent companies. It seems to us it is decisive in favor of plaintiff in error in the case at bar.

The language used in the Consolidating Act was, "*all* the powers *and privileges*." This Court, in that case, felt itself constrained to overrule the Supreme Court of Tennessee in support of the exemption. The

language of the act is not so broad as the Missouri Act under review, which is, "all the franchises and privileges as fully as if such consolidation had not taken place." Mr. Chief-Justice WAITE, in delivering the opinion, cites with approval the Scotland case, and also Green County vs. Conness, 109 U. S., 104 (which was also a case under the Missouri Consolidating Laws, passed after the Constitution of 1865), and then says:

"Here there is no charter of a new corporation with power to build a new railroad—no new taxable property is created. The legislation contemplates nothing more than the making of one railroad corporation out of two old ones, each of which has a completed railroad and the privilege of an exemption of its capital stock from taxation. If nothing at all had been said about the powers and privileges of the new corporation the presumption would have been that it took all which were possessed by the two original companies at the time of their union. To rebut this presumption it is necessary that a contrary intention should appear. The question is not as to a grant of new powers, but as to the taking away of old ones."

It seems to us this case is in point with the one under review. By the Alexandria and Bloomfield charter (quoted *ante*, p. 4), the line of its road was to extend from its eastern terminus, on the Mississippi River, to the State line between the States of Missouri and Iowa, and this property was to be exempt from taxation for twenty years after completion. The Act of March 2, 1869 *(reprinted in Appendix hereto)*, authorizing the consolidation, which this Court, in the Scotland County case, said "but served to effectually carry out the original purpose of the incorporation," created no new exemption—simply contemplated "the making of one railroad corporation out of two old ones." His Honor, Judge BLACK, in the opinion given in the

case under review (99 Mo., 30, reprinted, Record, p. 64), concludes that, if the act of consolidation creates a new company, then the property must be taxed. To our minds this cannot make the slightest difference, for there is no prohibition in the Constitution of 1865 upon any corporation, old or new, acquiring and holding any kind of property, with all the incidents attending the same. The saving clause in the Constitution (Art. 11, Sec. 3, quoted *supra*) continued all such, with the right of *amendment*, forbidding, only by general laws or special act, the granting of any *new* exemption not before enjoyed.

In our opinion the said Act of March 2, 1869 and the consolidation thereunder, now in question, create no *new* corporation in the sense of making a new corporation where no corporation existed before. As said in *Tennessee vs. Whitworth*, *supra*: "Here there is no charter of a new corporation with power to build a new railroad, no new taxable property is created." Simply "making one railroad out of two old ones." This is the distinction we seek to make. The word "new" is in the sense of a third person in a partnership when the firm is spoken of. It seems to us this is peculiarly so when a railroad company of one State unites with that of another, so as to facilitate the business of transportation. As said in *Muller vs. Dows*, 94 U. S., *supra*:

> "The two companies became one, but in the State of Iowa that one was an Iowa corporation, existing under the laws of that State alone. The laws of Missouri had no operation in Iowa."

There is a wide difference here between the present case and the case of R. R. vs. Georgia, 98 U. S., 359, cited by his Honor Judge BLACK in the case under re-

view (p. 67, Printed Record), where by that act the Atlantic and Gulf Railroad Company, by that name,

"was empowered to sue and be sued, to purchase and enjoy real and personal property, and to exercise corporate powers and continue the immunities, franchises and privileges in force, except so far as they might be inconsistent with the act of consolidation."

Judge BLACK (99 Mo., 38) admits that there is a difference (Printed Record, p. 68) between the question which arose in the Georgia case and those which arise in the present case under the Missouri Act of March 2, 1869, because in the latter act no corporate powers or privileges are granted except by reference to the powers and privileges contained in the laws creating the consolidating companies. Hence, we say the consolidating act under review is a mere permission to the old company to unite with the Iowa Company at the State line so as to effectually "bring Alexandria, a port of Missouri on the Mississippi River, in connection with the rich region of Southern Iowa."

While the rule is that exemptions from taxation will never be presumed unless the intention to relinquish is in clear and unambiguous terms, yet when the exemption is once established such exemption will not be held to be repealed or taken away by implication. The intention to repeal must be as clearly expressed as was the intention to exempt.

State vs. Minton, 3 Zab., 529.
State vs. Bentley, *Id.*, 532.
Jersey City R. R. vs. Jersey City, 2 Vr., 575.
St. Louis vs. Alexander, 23 Mo., 483.
State vs. Macon County, 41 Mo., 463.
Smith vs. Clark County, 54 Mo., 58.

In *State vs. Minton, supra,* Judge POTTS, in delivering the opinion of the Court, says :

" But the words ' acts or parts of acts ' in this supplement are not to be construed as embracing charters of private corporations or as affecting privileges or immunities granted to such, even though they be repealable. The reasonable inference always is that when the Legislature intends to take away these they will do it in express terms ; and, *e converso,* when they do not do it in express terms they do not intend to do it."

The above was said where it was sought to take away a tax exemption.

Now Judge BLACK, at page 65, printed record, says :

"The Alexandria and Nebraska City R. R. Co. was unquestionably exempt from taxation down to the time of the consolidation, namely, 3d May, 1870, and under the rule of the cases just cited the new company acquired that immunity so far as concerns the Missouri property, unless the law under which the consolidation was effected by the voluntary act of the two corporations produced a different result."

This establishes the exemption now claimed by the plaintiff in error as existing prior to the Constitution of 1865 and subsequently until 1870. The Consolidation Act of March 2, 1869, keeps it alive, and continues it in connection with the property to the consolidated company, inasmuch as the Constitution contained no prohibitory words forbidding such continuation, and was only intented to operate on *future* grants of exemptions, and existing laws were to continue in force and could be amended by special act or general laws, and did " not affect rights of the company untouched thereby " (Scotland case, 94 U. S., 690).

In view of the fact that the consolidating Act of 1870 has stood upon the statute books for twenty-one years, having passed through the several revisions ; that the

Statute of 1885 directs the levying of taxes on the part of the road not exempt where two consolidate, one being exempt and the other not ; that the rule of construction was settled, as held in similar cases by this and the Missouri Courts; and that exemption decisions in 65 Mo., in 1876 and in the 9th Fed. Rep., in 1881 stood unquestioned until the property was sold and passed into the hands of the plaintiff in error, who is an innocent purchaser—*in view of these facts it is clear that there was thus established a rule of property protected by the Constitution of the United States.*

Reed vs. Ownby, 44 Mo., 206.
State vs. Miller, 50 Mo., 129.
State vs. St. L., K. C. R. R., 77 Mo., 202.
Hoenssler vs. Greer, 78 Mo., 195.
State Bank of Ohio vs. Knorp, 16 How., 190.
Gelpcke vs. Dubuque, 1 Wall, 206.
Louisville & N. R. R. vs. Palmes, 109 U. S., 256.

The case in 77 Mo., *supra*, is very similar to the one at bar.

The two cases *Louisville, &c., Railroad Co. vs. Palmes*, 109 U. S., 244, and *St. Louis Railway vs. Berry*, 113 U. S., 475, relied on by the other side, have no application to the case under consideration ; on the contrary, we claim that the principles there announced, when the Constitutions of Florida and Arkansas are compared with the Constitution of Missouri, support the views we have before expressed.

The *Florida Constitution*, under which the first of those decisions was made, had this clause :

"The property of all corporations, whether heretofore or hereafter incorporated, shall be subject to taxation, unless such property be held and used exclusively for religious, educational or charitable purposes."

Art. 5, Sec. 48 of the *Arkansas Constitution*, under which the second of those decisions was made, was as follows:

"The property of corporations now existing or hereafter created shall forever be subject to taxation, the same as property of individuals."

Corporations were to be formed under general laws, but there was no clause, like the clause in the Missouri Constitution (Art. 11, Sec. 3, quoted *ante*, p. 8), continuing existing laws in force and authorizing amendments thereto. Mr. Justice MATTHEWS, delivering the opinion of the Court in the Florida case, while admitting that an exemption from taxation may be assignable, says the assignee must be capable, in law, of accepting and exercising such privileges. Then, referring to the Constitution, says:

"After the adoption of the Constitution of Florida of 1868, there could be no corporation created capable, in law, of accepting and enjoying such an exemption, for that was prohibited by the constitutional provisions which have been cited."

Then, as it appeared that the Pensacola Railroad Company was a corporation created by an Act of the General Assembly which took effect February 27th, 1877, it was incapable of receiving or holding property exempt from taxation, even though the Act of the Legislature was broad enough to transfer such exemption.

So, in the *St. Louis and I. M. Ry. case*, 113 U. S., at page 475, Mr. Justice MATTHEWS, again speaking for this Court, after determining that the act of consolidation in that case, under the laws of Arkansas, had the effect to create a new corporation, and citing the clause in the Constitution which declared that "the property of corporations now existing or hereafter created shall

forever be subject to taxation, the same as property of individuals, said:

"This rendered it impossible, in law, for the consolidated corporation to receive by *transfer* from the Cairo and Fulton Railroad Company, or otherwise, the exemption sought to be enforced in this suit. The case is thus brought within the rule declared and applied in Louisville & R. R. Co. vs. Palmes, 109 U. S., 244."

For the reasons advanced in this argument all this is inapplicable under the various provisions of the Constitution of Missouri.

In the above-mentioned Florida and Arkansas cases it is perfectly clear that the people, in framing these constitutions, had a special object in view—that of prohibiting corporations from holding property exempt from taxation, and they so expressed themselves "in unmistakable terms;" and because the framers of the Missouri Constitution did not so express themselves, in the language of Judge POTTS, 3 Zab., *supra*, they did "not intend to do it;" and with the same force Judge WAGNER, in speaking of the Missouri Constitution in the well-known Macon County case, 41 Mo., 464 (referred *ante*, p.), says:

"The intelligent members of the Constitutional Convention were certainly acquainted with familiar rules which obtain in construction of laws both organic and statutory, and also understood the force of the English language. If they had intended that the 14th Section of Article 11 should operate as a complete check and effectual bar against all subscriptions to stock in associations or companies under existing laws, they would have used words unequivocal in their meaning to carry out that intention."

The difference in the provisions of the Constitutions of Florida and Arkansas and Missouri seems also to have been entirely overlooked by Judge THAYER in his

opinion in Case No. 183 of this term, found in the Record in No. 183, at page 194, and also reported under the name of *Keokuk and Western Railroad Co. vs. County Court of Scotland Co.*, 41 Fed. Rep., 305, and also the difference which this and other Courts have always made between transfers of special privileges by *sale* and by *consolidation*. In the former nothing but the property passes unless specially authorized, while in the latter everything passes unless prohibited.

Green County vs. Conness, 109 U. S., 104.
Tennessee vs. Whitworth, 117 U. S., *supra*.

The case of the *Chesapeake & Ohio Ry. Co. vs. Miller* in 114 U. S., 176, cited by Judge THAYER, in his opinion last above referred to, was a case of sale. The case in 18 Wall., 391, *Trask vs. Maguire*, asserts what we may well admit, that the State could not, under the Constitution of 1865, make an *original grant of tax exemption*, either directly or in the form of a transfer. There the State had become the purchaser of a railroad and its appurtenances. The immunity from taxation previously granted ceased of necessity, the property belonging then to the State, and when the State again parted with the property it could not exempt it from taxation in any form.

The case in 89 Mo., 523, *State vs. Chicago & C. Ry. Co.*, is also in accord with the views we have before expressed:

1st. That, although the charter of a railroad company exempted its property from taxation, a branch authorized by an amendment subsequent to the Constitution of 1865 would be subject to taxation. It would

require an original grant in such case, which the Legisature could not make.

2d. The Burlington Company, being a foreign corporation, acquired the property of the Missouri Company under the Consolidating Act of 1870, and by its terms were bound to pay taxes. Here, as we have said before, the Legislature, when intending that another corporation shall not be competent to hold property exempt from taxation, says so in unmistakable terms.

Act of March 2, 1869, Analyzed, and Its Effect on the Present Case Considered.

Act of March 2, 1869, analyzed, and the legislative intention shown to be that the tax exemption should continue to the Consolidated Company, and such intention is consistent with, and not in contravention of, any provision of the Constitution of the State of Missouri.

It hardly needs to be stated that consolidations of railroad corporations are not all alike. The word consolidation does not mean any definite and particular thing. It is never possible to determine from the mere statement that there has been a "consolidation," what are the legal relations of the corporations which were parties to the consolidation or of their shareholders, either as respects one another or as respects the consolidated corporation. The word "consolidation," then, in legal parlance, means nothing more than union.

It will be useful here to recall the exact nature of a private corporation. A corporation is not the creature of the law-making power, it is not a something which

the law-making power calls into being; but a corporation is always and essentially the creature of its corporators or members; and the only necessity for any action on the part of the law-making power arises from the fact that at common law the exercise of corporate franchises was unlawful unless legalized.

See Morawetz on Corporations, §§ 735, 736.

The only function of the law-making power, therefore, is to legalize the contract of the members. This is evident when we consider that the Legislature is powerless to create a private corporation, for the reason that it cannot compel any person to become members of such corporation. This is equally true of a corporation originally formed and of one formed by the consolidation of existing corporations.

Now, the only function which the Act of March 2, 1869, under which the consolidation in the present case took place, performed was to legalize the contract of consolidation, and this was all that the act purported to do.

By reference to the said Act of March 2, 1869 (see Appendix to this brief), it will be seen that it is, in substance, as follows:

The first section provides for the consolidation of a railroad corporation of Missouri, whose railroad connects at the State line with the railroad of a company organized under the laws of an adjoining State; and the language is that such Missouri company

"is hereby authorized to make and enter into any agreement with such connecting company for the consolidation of the stock of the respective companies whose tracks shall be so connected, making one company of the two, whose stock shall be so consolidated upon such terms and conditions and stipulations as may be mutually agreed between them, in accordance with

the laws of the adjoining State in which the road is located with which connection is thus formed."

The second section requires a vote of the majority of the stockholders before the consolidation can be made.

The third section provides for certain details of the consolidation, like adopting a corporate name for the consolidated company, exchange of stock, filing consolidation agreement; and, also, contains certain provisions as to competing, intersecting and connecting railroads; also, provisions for bringing actions for grievances.

The fourth section is so important that we quote it here at length:

"Any such consolidated company shall be subject to all the liabilities, and bound by all the obligations, of the company within this State, which may be thus consolidated with one in the adjacent State, as fully as if such consolidation had not taken place, and shall be subject to the same duties and obligations to the State, and be entitled to the same franchises and privileges under the laws of this State, as if the consolidation had not taken place."

Section 5 provides that the act shall take effect upon its passage.

That is all there is of the act authorizing consolidation. It will be noticed that this act authorizes the union or consolidation of existing companies. Referring to and adopting the language of this Court in the similar case of *Tennessee vs. Whitworth*, 117 U. S., 149, we may say:

"Here is no charter of a new corporation with power to build a new railroad—no new taxable property is created. The legislation contemplates nothing more than the making of one railroad corporation out of two old ones."

The distinct expression of the legislative intention is that the company thus made out of two old ones is subject to all the liabilities, and bound by all the obligations, of the Alexandria and Bloomfield Company, is subject to the same duties and obligations to the State, and is entitled to the same franchises and privileges under the laws of the State, as if the consolidation had not taken place. The legislative intention here is unquestionable—namely, that the corporation thus created out of the old ones should have all of the franchises and powers of the old, including the limited charter exemption from taxation of the Missouri corporation. The Legislature did not create this new corporation; it merely legalized the contract made between the two old corporations, allowing the consolidated company to have all the rights and privileges which each of the old companies theretofore had.

Before the consolidation, each company had certain property, rights, franchises and privileges, and owed certain duties and obligations to the State. The only function of the Act of 1869 was to legalize the contract of consolidation, and to continue to the consolidated company the property, rights, franchises, privileges, duties and obligations, the same as they would have continued to the consolidated companies if the consolidation had not taken place. Among such rights and privileges was the limited exemption from taxation down to 1892 enjoyed by the Alexandria and Nebraska City Railroad Company.

This exemption, which was granted in the charter contract of that company by the Act of February 9, 1857 (Acts of 1857, p. 94), could not be taken away without the consent of that company.

Scotland Co. vs. Mo., Iowa & Neb. Ry. Co.,
65 Mo., 123.

The Act of March 2, 1869, authorizing consolidation, was but an amendment of the Charter of the Alexandria and Nebraska City Railroad Company, and was in perfect harmony with the original purpose for which that company was formed. Such an amendment is expressly authorized and permitted by the Missouri Constitution of 1865, Art. 11, Sec. 3 (quoted *ante*, p. 8). This Court so decided in *Scotland County vs. Thomas*, 94 U. S., 682 (this brief, p. 20), where this precise question was presented in reference to this very consolidation; and the Supreme Court of Missouri has also several times so decided.

In *State vs. Cape, &c., R. R.*, 48 Mo., 468, Judge WAGNER, in the opinion of the Court, says (p. 471):

"In Art. 11, Sec. 3 (quoted *ante*, p. 8), it is declared that all statute laws of this State now in force not inconsistent with this Constitution shall continue in force until they shall expire by their own limitation or be amended or repealed by the General Assembly. *In this section the Constitution makes express provision and clearly delegates the power to the Legislature to amend all laws in force prior to the time the Constitution went into operation. As this charter was granted previous to that time, I think it was properly subject to amendment*" (see this case at length, this brief, p. 11).

It was, therefore, perfectly competent for the Legislature to enact, by the amendment authorizing consolidation, that an exemption which it could not take away should continue after consolidation. This was not the *creation* or grant of an exemption, but the *continuation* of it. As the Alexandria and Nebraska City Railroad Company could not be deprived of the exemption against its will and without its consent, so it could not be deprived of the exemption by the consolidation, which was legalized by an Act of the State Legislature, as the Constitution expressly permitted the Legislature

to do by amendment to the charter of that company, in the terms of which act it was expressly provided that such exemption should continue "*as if the consolidation had not taken place.*"

The meaning and purpose of Sec. 3, Art. 11, and Sec. 16, Art. 11, of the Missouri Constitution above herein quoted *(ante*, p. 8*)*, are very plain. The existing exemption of the Alexandria and Bloomfield Railroad, under Sec. 9 of its charter, was not impaired or affected by the Constitution of 1865, and was not intended to be.

Scotland Co. vs. Mo., Iowa & Neb. Ry. Co., 65 Mo., 123.

The power to amend that charter was expressly reserved to the Legislature by Sec. 3, Art. 11. Sec. 16, Art. 11 of the Constitution (quoted *supra*), which is the only one relied on by the other side, imposes a prohibition on the Legislature against granting *future* exemptions of property from taxation. That section did not purport to interfere with existing contract exemptions. This the State could not do. It did not purport to interfere with existing charters, as is shown by a long line of decisions in this Court and in the Supreme Court of Missouri. The mischief at which Sec. 16, Art. 11, was directed, was *future* legislative acts or contracts granting exemptions from taxation. This section says to the Legislature: "You shall not after this Constitution takes effect grant any new exemptions from taxation." That is all. It does not touch existing exemptions. It does not undertake to do so. It does not prohibit the Legislature from saying as it did in Sec. 4 of the Act of March 2, 1869, that a company having a valid exemption prior to the

Constitution of 1865 may carry this exemption as one of its "franchises and privileges" into another organization formed by its union with a corporation of another State.

It is settled that the words "franchises and privileges" will carry the tax exemption to a consolidated company.

Tennessee vs. Whitworth, 117 U. S., 149, and cases there cited.

But the legislative intent that it should carry the tax exemption is placed beyond question by the language of Sec. 4 of the Act of March 2, 1869, that the consolidated company "shall be subject to the same duties and obligations to the State, and be entitled to the same franchises and privileges under the laws of this State, *as if the consolidation had not taken place.*"

No new exemption has been granted. No new exemption is claimed. The so-called consolidated company simply succeeded, in 1870, to the owership of a railroad having a valid exemption, and claims simply that and nothing new. The case is not within the mischief at which Sec. 16, Art. 11, was aimed. The Alexandria and Bloomfield charter granting the exception is excepted from the operation of the Constitution, as appears by Sec. 3, Art. 11, and the uniform decisions of the Courts of Missouri and of this Court. It is not within the language of Sec. 16, Art. 11.

The decision of the Supreme Court of Missouri, in 65 Mo., and of the Circuit Court of the United States, in the *Secor* case, are, we think, sound constructions of the Constitution and of the Act of March 2, 1869.

The subsequent decision of the Supreme Court of Missouri in the judgment to which the present writ of

error goes is based upon a misconception of the decisions of this Court which it mistakes and misapplies.

We refer without here repeating them to our further argument in case numbered 414, the *Keokuk & Western R. R. Co., appellant, vs. County Court of Scotland County et al.*, which is submitted herewith.

It seems to us that the views we have expressed are not only consistent with the judgments of this Court and of the Acts of March 2d, 1869, the General Laws of 1870, but that any other conclusion would be inconsistent with the actual judgments of this Court.

We therefore submit that the judgment of the Court below must be reversed.

JOHN F. DILLON,
FELIX T. HUGHES and
THOMAS DE WITT CUYLER,
For Plaintiff in Error.

APPENDIX.

Missouri Act of March 2, 1869 (Laws 1869, p. 75), Authorizing Consolidation.

Section 1. That any railroad company organized under the general or special laws of this State, whose track shall at the line of the State connect with the track of the railroad of any company organized under the general or special laws of any adjoining State, is hereby authorized to make and enter into any agreement with such connecting company, for the consolidation of the stock of the respective companies whose tracks shall be so connected, making one company of the two, whose stock shall be so consolidated, upon such terms and conditions and stipulations as may be mutually agreed between them, in accordance with the laws of the adjoining State in which the road is located, with which connection is thus formed.

Section 2. Such consolidation shall not be made, however, unless the terms and provisions thereof shall be approved by a majority of the stock, or the holders of a majority of the capital stock in each of said companies whose stock shall be consolidated, at some meeting called expressly for that purpose, or by the approval of the same by the holders of the same amount of stock in each of said companies, in writing, and signed by them.

Section 3. When the terms of said consolidation shall have been agreed upon, as above stated, and ap-

proved in one or the other of the modes above set forth, it shall be competent for the Boards of Directors in each of said connecting companies to carry the same into effect, and adopt by a resolution a new corporate name for the company, which shall be formed by the consolidation, and to call in the certificates of stock then outstanding in each company, and exchange them for stock in the new company, as may have been agreed upon by the terms of the consolidation; and a copy of the said consolidation agreement, and the resolutions of consolidations, and the name adopted for the new company, shall be filed with the Secretary of State, and shall be conclusive evidence of such consolidation, and of the corporate name of the consolidated company; provided, that whenever at any place on the line of this State, two or more railroads in this State are competing for the business to or from any railroad in an adjoining State, and a consolidation of either of such competing roads with the road in an adjoining State would diminish or prevent such competition, then, and in such case, consolidation shall not be permitted under this act, and in case any railroad in this State shall hereafter intersect any such consolidated road, said road or roads shall have the right to run their freight cars without breaking bulk upon said consolidated road, and such consolidated road shall transact the business of said intersecting or connecting road or roads on fair and reasonable terms; and the same may be enforced by appropriate legislation; and provided, further, that the State reserves to itself the right to guarantee to any road that may hereafter be built to any such point the right to make a fair contract for the transportation of freight and passengers with such consolidated road; and in case any such railroad company shall consolidate, or attempt to consolidate, with a connecting road, contrary to the provisions of this act, any person or party aggrieved may bring action agajnst them in the Circuit Court of any county through which such road may pass, which Court shall have jurisdiction

in the case, and power to restrain by injunction or otherwise.

SECTION 4. Any such consolidated company shall be subject to all the liabilities, and bound by all the obligations of the company within this State, which may be thus consolidated with one in the adjacent State as fully as if such consolidation had not taken place, and shall be subject to the same duties and obligations to the State, and be entitled to the same franchises and privileges under the laws of this State, as if the consolidation had not taken place.

SECTION 5. This act shall take effect and be in force from and after its passage.

Approved March 2, 1869.

152 US 301

152 U S 301

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CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1893.

TERM No. 414.

THE KEOKUK AND WESTERN RAILROAD COMPANY,
Appellant,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI; BENJAMIN F. BOURN, as Collector of Revenue of said County, et al.,
Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF FOR APPELLANT.

JOHN F. DILLON,
FELIX T. HUGHES,
THOMAS DE WITT CUYLER,
For Appellant.

C. G. Burgoyne, 146-150 Centre St., N. Y.

Supreme Court of the United States.

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STATEMENT AND BRIEF FOR APPELLANT.

JOHN F. DILLON,
FELIX T. HUGHES AND
THOMAS DE WITT CUYLER,
For Appellant.

Supplemental bill of Keokuk and Western Railroad Company to be subrogated to rights of Secor and others, including the Missouri, Iowa and Nebraska Ry. Co., in an original bill of injunction and the decree

therein, and to have the benefit of said decree, and for citation against the present county Collectors of Revenue, to show cause why they should not be punished for contempt for violation of the injunction and decree in the Secor suit.

The bill of revivor (which the Court—THAYER, J.—in his opinion—printed record herein, p. 250—calls and treats an ordinary supplemental bill) sets forth the following facts:

That on August 6th, 1879, a bill was filed in the Court below by certain stockholders of the Missouri, Iowa and Nebraska Railway Company making that company, the county courts of the several counties in Missouri along the line of the railroad, the Justices of such courts, the Collectors of Revenue thereof, and certain State officials and their successors, defendants; that such proceeding was had in said court that on May 10th, 1882, a final decree was entered in said cause in accordance with the prayer of the bill and its amendments (R., pp. 1 and 40). This decree was never appealed from, and remains final and in force.

The supplemental bill herein, as we shall hereafter call it, with its amendments (pp. 94, 106), showed that a mortgage was placed on the railroad of the said M., I. & N. Ry. Co. in the year 1870, to secure $3,025,000 in bonds, and also on the 1st of March, 1881, that another mortgage was placed on the said railroad in pursuance of a certain contract of lease and all but seventeen of the original bonds of 1870 were taken up. That a bill to foreclose the 1870 mortgage was filed in the United States Circuit Court of Iowa December 30th, 1879, which resulted in a decree of foreclosure October 22d, 1880, which decree, by reason of certain arrangements and contracts with the stockholders and

bondholders of said M., I. & N. Ry. Company remained unexecuted until 1885, and meanwhile all of the bonds included in the decree were taken up as stated before except seventeen. When in 1885 it became necessary to enforce the decree, in consequence of the said mortgage of March 1st, 1881, and other subsequent contracts, including the sale of seventeen miles of the west end of the road, it was necessary to exhibit a supplemental bill of foreclosure in said Iowa Federal Court, making the Mercantile Trust Company of New York the Trustee in said mortgage, the Humeston and Shenandoah Railroad Company, the purchaser of said seventeen miles, and others co-defendants with said M., I. & N. Ry. Company (Rec., pp. 170–183). This proceeding resulted in a supplemental decree of foreclosure in said Iowa Federal Court, July 8th, 1886 (Rec., p. 183).

In this decree the Court found that of the 3,025 bonds of the M., I. & N. Ry. Company of the 1870 issue, all had been taken up and exchanged under the mortgage of March 1st, 1881, except 17 (Rec., pp. 185, 186). The decree provided the manner in which the proceeds of the property on a sale, should be divided, and further ordered adjudged and decreed that the defendants Missouri, Iowa and Nebraska Railway Company and the other defendants, and all or any person or persons, party or parties claiming by or under them, or either or any of them, shall be absolutely barred, foreclosed and precluded from all right, title, interest, claim or equity of redemption in or to the whole or any part of the above-described premises or property; and it is further ordered, adjudged and decreed that the defendants the Missouri, Iowa and Nebraska Railway Company, the Humeston and Shenandoah Railroad Com-

pany and the Mercantile Trust Company *shall each make, execute and deliver to the purchaser or purchasers at the said sale proper and suitable deeds or instruments of conveyance of the said mortgaged premises and property conveying to said purchaser or purchasers all the right, title and interest of said defendants in and to the mortgaged premises and every part and parcel thereof* (Rec., p. 189). After the sale and confirmation to Jesup and Thatcher, and conveyance by them to the appellant company, the Missouri, Iowa and Nebraska Railway Company and Mercantile Trust Company, in pursuance of said decree, also made and executed deeds in proper form to said purchasers Jesup and Thatcher, and through proper conveyances by them the appellant acquired all their titles (Rec., pp. 108, 218–237).

Although these facts appeared by the supplemental bill of revivor herein and the proofs, yet the Court found the equities were with the defendants below, and accordingly dismissed the supplemental bill, from which the case is brought here by appeal. The final decree is found at pages 214, 215 of the record.

The Court below rendered two opinions which are now material: one on demurrer (beginning p. 249), the other on final hearing (p. 254).

We deem it unnecessary to review the entire record for suffice it to say the Court found the Secor decree, as we shall call it, being the original decree herein, valid, and that it was effectual in favor of the complainant stockholders therein and in favor of the said Missouri, Iowa and Nebraska Railway Company, one of the defendants in said suit, and could have been enforced by any of them against any attempts of the counties to collect taxes off of said Missouri, Iowa and Nebraska Railway Company prior to

December 1st, 1892, but the Court found that the Keokuk and Western Railroad Company, complainant in said supplemental bill and appellant herein, was not in privity with the said Secor decree and not entitled to its benefit, and, therefore, could not enforce the same or have the benefit thereof. The Court admitted that the decree protected the property from taxation while owned by the Missouri, Iowa and Nebraska Railway Company, and from taxation to that company for the year 1886 and preceding years, and yet held that the appellant as grantee of that property was not entitled to the benefit of the decree in favor of its grantor in respect to that very property.

ARGUMENT.

We contend:

1st. That the effect of the Secor decree was to fix the status of the property in the hands of the M., I. & N. Ry. Company so that for the period therein limited no taxes thereon could be legally levied or collected during the ownership thereof by that company. The Court decreed the property exempt for the twenty years after completion of the railroad, and enjoined the company itself from paying any taxes during that time, and enjoined the county officials from enforcing the collection of any such taxes. Here was a property to which, for the period limited, no tax lien could possibly attach during the ownership thereof by the M., I. & N. Ry. Company. Then it certainly passed to the appellant herein, as purchaser, free from any such liens, and this would seem to render it impossible in law to

charge this purchaser, or the property, with a supposed debt which by no possible means could exist during such ownership, much less create a lien upon the property.

2d. Conceding for the argument (though we deny, as hereinafter shown, its soundness as applied to this case) the doctrine as laid down by the Court below (R., p. 253), that a mortgagee is not bound by judgments or decrees rendered against the mortgagor subsequent to the execution of such mortgage, unless the mortgagee, or some one representing him, like the trustees of mortgage bondholders are made parties, or unless the mortgage was executed *pendente lite*, or after the decree, yet we contend that it is fully established by the record that the appellant company holds title through mortgages, and title deeds made *pendente lite*, and subsequent to the bringing of the Secor suit.

3d. That, under the Railroad Tax Laws of Missouri, the railroad property, *including all interests therein*, is taxed, *as a whole*, to the owner, viz., the railroad company, irrespective of the fact whether the property is mortgaged or not, and that the statutes of the State provide the mode and manner of the assessment and collection of the taxes, and designate such *railroad corporate owner* of the property as the only proper defendant, and declare the effect of a judgment against such company to create a lien superior and paramount to any mortgage or other lien upon the property, and a deed to the collector, who is to be plaintiff in such tax suit, to pass the absolute title in fee to the property, and that, therefore, the railroad company

becomes, in law, the proper party to represent (and in the Secor case did represent) the mortgagees or bondholders in all tax suits affecting the status of the property; and, hence, a bill in equity, like the Secor suit, enjoining the collection or payment of taxes where the railroad company is defendant is, in effect, a suit where the bondholders or mortgagees are parties, and so binds them, and they are, therefore, in privity with such decree.

We will briefly discuss these three propositions in the order above stated:

I.

That the Secor decree (see text thereof, Record pp. 40, 41) affected the railroad and property of the Mo., Iowa & Neb. Ry. Co. (now owned by the present appellant); that it qualified the estate of the then owner, the Mo., Iowa & Neb. Ry. Co. (the then real owner or party in interest) in the property, attaching to it a valuable immunity or privilege which is not personal but runs with the land, and one that can be invoked for the protection of a subsequent owner of the property, binding privies as well as parties, are propositions which are admitted by the Court below (see opinion of THAYER, J., Record, pp. 251, 252, and authorities cited on last-named page).

These propositions, if true, required a decree in favor of the appellant; but the Court decreed against the appellant on the mistaken proposition of fact, that the appellant derived title alone from the foreclosure sale

under the mortgage of 1870 and the mistaken proposition of law (as we shall endeavor to show in our subsequent points) that, as the bondholders or trustees in that mortgage were not parties to the Secor suit, the decree therein could not in law operate as an estoppel in their favor, or in favor of the appellant as the grantee of the Missouri, Iowa and Nebraska Railway Company.

The proposition of the Court below, above referred to, namely, that the decree directly affected the property and attached to it *as property* a valuable privilege or immunity is undeniably sound.

The original legislative contract was :

> " That the stock of said company shall be exempt from taxation for the period of twenty years after its completion " (Sec. 9, Charter of February 9, 1857).

As judicially construed by the Supreme Court of Missouri, in a long and undisturbed line of decisions, this includes *the property of the company used for railway purposes represented by the stock.* (See our brief on this point in No. 182, where the subject is discussed and the cases referred to.) Therefore, the legislative contract with the Alexandria and Bloomfield R. R. Co. was that, in consideration that it built the railroad, its property " shall be exempt from taxation for the period of twenty years after its completion," meaning by " property " the railroad itself and its appurtenances, fixtures and equipment.

This is not a franchise properly so called. It is not a contract with respect to franchises or personal rights. True it is a contract, and a contract with the chartered company, but it is a contract which has *a specific reference to its property.* The contract does not say to

the company "You, as a corporation, are exempt from taxation," but it says "your railroad and 'connected property is exempt from taxation." This is not either in form or essence a personal privilege granted to the corporation named, but a privilege which is directly and specifically attached to the "property." This privilege was that the property for the specified time should be free from taxation; and accordingly it could not be charged with taxes, and hence was free from any possible lien for taxes for the limited period. And in the Secor case it was decided and decreed that this privilege remained attached to the property in the hands of the Mo., Iowa & Neb. Ry. Co., the consolidated corporation. As the consolidated company held the property with this privilege attached to it *as property*, a privilege in the language of THAYER, J. (Record, p. 251), that "attached to it an important immunity not usually incident to ownership and that rendered ownership more valuable," this property passed to the purchaser, the present appellant, in precisely the same plight and condition in which it was possessed and held by the Mo., Iowa & Neb. Ry. Company, that is free from any antecedent liability or liens for taxes. It had previously passed to the consolidated company in the same plight and condition in which it was held by the original Alexandria and Bloomfield Company, that is free from liability for taxes. It so passed as shown in our brief in No. 182 (p. 30 *et seq.*), by virtue of Section 4 of the Act of March 2, 1869, and the provision therein contained that the consolidated company shall "be entitled to the same franchises and *privileges* under the laws of this State, *as if the consolidation had not taken place*." What plainer language needs be used to express the legislative intent? At all events, any contro-

versy on this point is closed by the Secor decree made in 1881 to the effect that the Mo., Iowa & Neb. Ry. Co., held this property free from taxes; and this judicicially fixed, establised and adjudicated that that company held the property free from liability to taxation down to 1892. If the Mo., Iowa & Neb. Ry. Co. still held it, that decre would be conclusive in its favor.

The appellant company holds its title by a foreclosure sale both under the mortgages of 1870 and 1881, and under deeds from the Mo., Iowa & Neb. Ry. Co. and Mercantile Trust Company, trustee, and why it is not entitled to hold it by the same rights that its grantor held it surpasses our ability to perceive or understand.

Analagous decisions support this view. Thus in many of the States there are homestead exemption laws, and where these exempt the homestead from execution sale, it is universally held that a judgment against the owner creates no lien on the property, and it cannot be reached by execution in the hands of a purchaser from such owner. Such is the law of Missouri as well as elsewhere (99 Mo., 229).

Freeman on Judgments, 355.
Lanahan vs. Sears, 102 U. S., 321.

The status of exemption, so to phrase it, inheres in the property and is not personal to the homestead owner. And so we insist that the Secor decree fixed and established the status of this property as respects taxation in the hands of the Mo., Iowa & Neb. Ry. Co., for the prescribed period, and the appellant was entitled to buy it in the same status in which it was held by the Mo., Iowa & Neb. Ry. Co., and to possess and enjoy it without liability for taxes which had previously been levied against it when owned by the Mo., Iowa & Neb. Ry. Co.

We now proceed to discuss the second proposition above stated.

II.

The Court below says it finds from the record that the appellant derives title to the property in controversy under the mortgage of date June 1st, 1870 (Rec., p. 255). The only evidence on that point is the decree of foreclosure of October 22d, 1880 (p. 190), which provides (p. 196) for the Missouri, Iowa and Nebraska Company making deed to purchaser at any foreclosure sale under such decree.

The supplemental decree of foreclosure of July 8th, 1886, in which Mercantile Trust Company and others, besides the M., I. & N. R. R. Co., were parties defendant, foreclosing the mortgage of March 1st, 1881, which was made *subsequent* to the bringing of the Secor suit, and hence this case is within the rule as laid down by the Court below (Record, pp. 251, 253).

This mortgage of 1881 had every element of new mortgage. The old mortgage of June 1st, 1870, had $3,025,000 of eight per cent. bonds, and at date of foreclosure of it—October 22d, 1880—these had accumulated $1,565,185.40 interest, none of which had been paid (Rec., p. 201). This debt, with the exception of $17,000, and all the accrued interest of the debt exchanged was paid by the issuance and delivery of $2,256,000 of the six per cent. new bonds, guaranteed by the Wabash Company, and the Court so held in the supplemental decree, **and gave judgment for only the new bonds and unpaid interest on them.**

The only point held as to the 17 old bonds under the terms of exchange was that in the distribution of the proceeds of sale the old and new had no priority, and that dollar for dollar must be paid on each bond until the new bonds were paid off, and then the balance would go to the old bonds. So we see that the M., I. & N. Railway Company in this case received a great benefit, and, in fact, received back from the holders of the old 1870 bonds almost their entire debt, and practically a new title or extinguishment of the old debt. All this appears by the decrees (Rec., pp. 206, 207).

The deeds made subsequent to 1886 by the Missouri, Iowa and Nebraska Railroad Companies and Mercantile Trust Company (Record, pp. 218-237), conveyed all their respective rights, titles and interest in the property of every kind and nature to the purchasers at the sale under the supplemental decree of foreclosure, **and this was the only decree in which there was any sale of the property.** We contend that the above-mentioned finding of the Court below, viz., that appellant derived its title to the property in question under the mortgage of June 1, 1870, is a mere expression of its opinion of the law upon a supposed state of facts, and can have no weight with this Court as a finding of fact. It is clear that the Court below is in error on this point. Appellant need not rely on any one of the deeds or conveyances. It may use them all, and if, from any or all of them, it appears that it acquired title of any kind to the property, or any interest in the same, pending the Secor suit, or subsequent, then it is in privity with the Missouri, Iowa and Nebraska Railway Company, and the decree of the Court below on the principles admitted by that

Court in its opinion (Record, pp. 251, 253) must be reversed.

The Court which rendered the foreclosure decree of 1880, and supplemental decree of 1886, had personal jurisdiction of the Missouri, Iowa and Nebraska Railway Company and Mercantile Trust Company, and could and did command and decree them, as it did, to make deeds of conveyance to the purchaser. No doubt, the object of such decrees is, in all cases, to convey everything in and concerning the company defendant, which is or can be of any value to the purchaser. These decrees and deeds are peculiarly applicable to railroad foreclosures on account of the variety of interests which are involved.

It may be possible, in this case, that the deeds were worthless, except for the very purpose of transferring the rights acquired by the Missouri, Iowa and Nebraska Railway Company, in and by the Secor decree.

Deeds, when made by a Master or Commissioner, have exactly the same effect as if made by the party himself, and such will the effect of the decree, especially where, as in the present case, the proceedings are in equity.

Pomeroy Equity Juris., Sec. 1317.

And cases cited.

Hoffman vs. Stiger, 28 Iowa, 302.
King vs. Bill, 28 Conn., 598.
Gitt vs. Watson, 18 Mo., 274.
Ill. G. T. Ry. Co. vs. Wade, 140 U. S., 65.

This last case seems to us peculiarly applicable. The holder of bonds issued by a town in payment of its subscription to railroad stock, which bonds had been held void, sued the town and the railroad company and

procured a decree that the bonds should be surrendered and canceled and the stock in payment of which they were issued transferred by the town to him. It was held that

> " he was in the same attitude as if the town had voluntarily transferred the stock to him, and the railroad company could not object. This Court says the railway company has no interest in protecting the rights of the town. It could not interfere to prevent a voluntary transfer of the stock, and it could not be heard to say the town shall not abide by the terms of that decree, so that the present appeal is to be considered by us precisely as if the town had voluntarily transferred the stock to the plaintiff or as though he had in a different suit and by a prior decree obtained a transfer of its interest. The plaintiff has all the rights that the town had."

This seems to us directly to sustain the proposition we are contending for. The counties cannot be heard to say that the appellant company has not all the rights to enforce the Secor decree that the Missouri, Iowa and Nebraska Company had. Here we have a decree directing a conveyance by the Missouri, Iowa and Nebraska Railway Company itself, and a conveyance upon its part in due form, and as said by this Court in above case, the appellant company certainly can enforce all the rights established in and by this decree which the Missouri, Iowa and Nebraska Railway Company could have enforced. Had the Missouri, Iowa and Nebraska Railway Company voluntarily sold or transferred its title to the Keokuk and Western Railroad Company, subsequently to the Secor decree, no one would or could question the rights of the latter company, to the benefit of the Secor decree as a privy.

The foreclosure decree bound the Missouri, Iowa and Nebraska Railway Company, so that thereafter it

could assert no title or right, which it formerly possessed, against Jesup and Thacher, as purchasers, or their grantees, the Keokuk and Western Railroad Company.

It is a fundamental doctrine that every decree of a Court within its jurisdiction and not void on its face, is, in the absence of fraud, after the Court has risen for the term, and after the period for new trials and other rehearings has elapsed, and likewise before this, except by these methods, conclusive between the parties (5 Am. & Eng. Enclyclop. of Law, p. 381, and cases). Privies are also bound by a decree against the parties to the extent of their subsequently acquired estate or interest in the subject matter in controversy, so it becomes clear that appellant company holds title to the M., I. & N. Ry. Company's property by titles acquired *pendente lite* and subsequent to the Secor suit as well as prior thereto. And, hence, on the very principles recognized by the Court below (Record, p. 253) its decree was erroneous.

III.

Our third proposition *supra*, assumes that under the law of Missouri for taxation of railroads, the property and all estates therein are taxed as *a whole* to the railroad company and to no one else, and that tax proceedings against the company by suit or otherwise, will divest the mortgagees of their rights although they are not made actual parties to any such suit or proceedings. It also assumes that such bondholders or their trustees are parties and

privies to such tax proceedings at law, and that inasmuch as the Secor suit was a proceeding in equity to prevent a multiplicity of tax suits which would become necessary in the various years in which the taxes were to be collected during the limited exemption, it follows that if the railroad company becomes the legal representative of the bondholders, or their trustee in the various tax suits at law, the same would be true in a proceeding in equity to enjoin such taxes, and we contend that the Court below erred in not so holding. In these modern days the railroad company may do many things which bind a mortgagee in the way of preserving the property without the presence or actual consent of the mortgagee, such as creating debts for supplies and labor as shown in the case of Fosdick vs. Shall, 99 U. S., 235, and subsequent cases to the same effect; and so the railroad company might obtain a party to stand as security on an appeal bond and the property be bound to protect him.

There have been no decisions in the Missouri Courts construing the effect of a judgment for the enforcement of taxes assessed against a railroad company where the property was mortgaged, and the mortgagee not a party; but the principle which such a case involves has been decided as we shall show, and is plain and settled law in Missouri. As it is almost universal that railroads are mortgaged, and most of them for more than they are worth, it would be imputing great ignorance to the Legislature in passing tax laws without making provisions for the bondholders or mortgagees being parties, or whereby they would, like all others interested therein, be bound by the tax suits. If the law in such cases were that only the title of the railroad company is sold, and the bondholder not affected, it would certainly

be a startling announcement; but, in fact, there is no room for doubt as to what the Statute of Missouri intended to do, namely, to make the railroad company operating the road the *representative for the assessment and collection of taxes of all interests in the property*, and that a suit against the railroad company would cut out the bondholder without his being a party on the record to such suit. The Statute of Missouri, as of many others of the States, casts the duty upon the railroad company. The only question, is the statute valid as written? The Courts are uniform that it is.

Freeman on Judgments, 2d Ed., Sects. 174 and 176.
Cooley on Taxation, 2d Ed., Sects. 411 and 515.
Blackwell Tax Titles, Med., page 616.
Hillard on Mortgages, Sects. 440, 442 and 552.
Bowers vs. Chambers, 53 Miss., 259.
Harris vs. State, 55 Miss., 50.
Knox vs. Hinderkeper, 21 Wis., 527, 2d., 350.
Parker vs. Baxter, 2 Gray, 185.
Turner vs. Smith, 14 Wall., 553.
Geekie vs. Kirby Carpet Company, 106 U. S., 379.

BLACKWELL says the sale creates a new and independent title, and its effect is to extinguish all prior claims; that it is a new and independent title.

COOLEY says, if statutory form of deed is made, it is sufficient to pass the whole title (p. 515). In 53 Miss., the Court says:

"When the Legislature prescribes a form, it cannot be error to adopt it. In giving a form, we must suppose everything was included which was intended to be required. It was expressly given to prevent error; it cannot, therefore, be error to follow it."

The case in the 2d Gray (Mass.), 185, above cited, holds that lands taxed to the mortgagor who is in possession, creates a lien, and a sale under same will pass the right of the mortgagee. The Court says :

"The tax is upon the parcel of real estate *as one entire interest*. It is assessed as a whole; that is, its entire value is to be assessed to the person who shall either be the owner or in possession thereof on the 1st day of May."

This case is very similar to the one at bar.

In the case of Turner vs. Smith (14 Wall., 553), a similar question arose. The President of the United States was directed to declare, by his proclamation, what States or parts of States were in insurrection, and, "thereupon, the said several lots—parcels of land—became charged with their respective portions of a direct tax, and the same, together with the penalty, became a lien thereon, without any further proceedings whatever." Another section of the law defined the title which would pass to a purchaser, upon a sale under such forfeiture, to be one in fee simple, free and discharged from all liens, incumbrances, right, title and claim whatsoever. Mr. Justice MILLER, in delivering the opinion of the Court, said :

"It is clearly a direct tax on the land, and on all the estate, interest and claims connected with or growing out of the land. All this was forfeited to the United States, on non-payment of the taxes, and passed, with the sale, to the purchaser, subject, alone, to the right of redemption, which the law allowed. In that respect it was a defeasible title, but in all other respects, perfect, complete and entire. We are of opinion, therefore, that the sale, being a valid one, the rent charge of the defendant in error was cut off." Comment is unnecessary.

The Court below (Rec., p. 255) seemed to doubt the construction of the railroad tax law as contended for by appellant and cites State *ex rel.* Graves vs. Ewart, 99 Mo., 17, and Powell vs. Greenstreet, 95 Mo., 14, but it will readily appear from an examination of these cases that they are suits growing out of property taxed to individuals, arising under Article VI., Section 7682, R. S. of Mo., 1889, and not under Article VIII., same statutes for the assessment and taxation of railroads. Sections 7717 and 7718 of Article VIII., provide the manner of the assessment of railroads, and that the owner shall give the same in for assessment.

There is a separate Code in Missouri for the "Assessment and Taxation of Railroads," which is found in the Revised Statutes of Missouri for 1889, Vol. 2, p. 1794, Article VIII. These provisions were in force at the time the taxes now in question were levied. Some of the more material provisions of said Article VIII. are reprinted for convenience in the Appendix hereto.

Section 7737 provides that the taxes levied against such company shall be a prior lien in favor of the State upon all the property of such company, real, personal or mixed, including road bed, rolling stock, etc., and making such taxes a lien superior to all other liens, judgments or decrees, of whatever kind, and shall be enforced as hereinafter provided. Then Section 7742 provides the form of suit, making the railroad company sole defendant, and Section 7743 declares the effect of such a judgment and of the deed made by the Sheriff and that the same "shall convey THE TITLE IN FEE to such purchaser to the property therein named."

Now, Sections 7553 and 7555, Article VI., provide

for the assessment of real estate against individual owners that it shall be assessed to the owner if known. If not, the name of the party who paid the last tax, or, if no tax had ever been paid, then to the original patentee, grantee or purchaser from the General Government. Suits must be brought against the owner or owners appearing of record. When the actual owners are not known, the Missouri Court held, under these two last-named sections, that the suit must be brought against the last recorded owner, and in that respect the proceeding is *in personam* rather than *in rem*. But in that case, if the suit is brought against a recorded owner, it will defeat the title of the real owner, although he may not be a party to the suit.

See cases Cowell vs. Gray, 85 Missouri, 169, and other cases cited under Section 7682 of Revised Statutes, *supra*.

Also in point:

Payne vs. Lott, 90 Mo., 676.

In Kelly vs. Weir, 38 Fed. Rep., 291, the same doctrine was recognized; namely, that, where the tax is upon the land and all interest therein, the legal owner of the land for all purposes of taxation represents all other interests, and may therefore file a bill to enjoin tax collections; and the result binds all interests represented in the suit.

Same principle, see Perry on Trusts, Secs. 331 and 527, and cases cited.

In conclusion we briefly notice two special defenses that may be relied on by the appellees in this Court as they were in the Court below.

(A) One is the defense of *res judicata*.

(B) The other is that by reason of the lease of September 1, 1880, to the Wabash, &c., Ry. Co., the property became taxable if it was not so before.

A.

The stipulation admits the record in Case 183 (Keokuk and Western R. R. Co. vs. Scotland County), submitted herewith, was offered in evidence in the Court below. By this record counsel for appellee claim an estoppel as *res adjudicata* in the present case for the reason that the questions at issue here were set up, litigated and decided in that case.

In answer to this it will only be necessary to call attention to the facts in the two cases, by which it will readily be seen that the causes of action are entirely different, and the Court below so held, and said in his opinion (Printed Record, p. 198 of Case 183) that he did not understand the judgments referred to in the State Court (being case in 65 Mo., 123), or Secor vs. Singleton *et al.*, 9 Fed. R., 809 (being this case on the original bill), were pleaded for the purpose of an estoppel in this proceeding, "but the contest is that the judgment and decree in the two cases established a rule of property on the faith of which complainant has acted."

Then in closing the opinion he further says:

"It will be understood of course that the Court intends to express no opinion as to the effect of the decree in the Secor case, which has now become final, further than as heretofore stated, that it cannot be regarded as working an estoppel in this proceeding. Whatever rights were secured by that decree must of course be enforced as between parties now entitled to the protection of the decree."

So the Court expressly decides that the question, by that decree, is not *res adjudicata* in this:

The facts in the two cases require different pleadings and proof. The decision in the one case does not necessarily dispose of the other, and as shown by the decision of the Court did not do it.

Cromwell vs. Sac County, 94 U. S., 351.
Russell vs. Place, 94 U. S., 606.
Sesbit vs. Riverside, &c., District, 144 U. S., 610.

Besides all cases were appealed to this Court, which prevented their use as an estoppel in any case.

Freeman on Judgments, 2d Ed., Sec. 325.
Cohn vs. Lehman, 93 Mo., 574.
Woodberry vs. Bowman, 13 Cal., 634.
Haynes vs. Ordway, 52 N. H., 284.
McCurdy vs. Alpha Gold Mine, 3 Nevada, 217.

B.

A claim is presented in argument by the appellees in the present cause that the lease of September 1, 1880, to the Wabash, St. Louis and Pacific Railway Company, a corporation existing under the laws of Missouri, with its principal place of business in the City of St. Louis, Missouri, while an ordinary lease of this kind might be made without affecting the tax exemption, still as this one was perpetual or "forever," being a lease with renewals, it was in law sale, and, therefore, worked an extinction of such exemption. Counsel's contentions on this ground are directly in the face of the decisions of the Missouri Supreme Court in,

State *ex rel.* Glenn vs. The Mississippi R. Bridge Company, 109 Mo., 253.

Daniels vs. St. L., K. C. & N. Ry. Co.,.52 Mo., 43.
Sly vs. Penn. Ry., 65 Pa. St., 209.

The Court in this case says :

" The fact that the bridge is under lease to a railway company ' forever,' at a fixed rent, subject to a defeasance in case of failure by the lessee to comply with its terms, does not destroy the ownership by the bridge company within the meaning of the revenue law."

A reference to the lease in the case at bar (p. 109, Printed Record) shows that it is exactly alike in all its conditions of defeasance and forfeiture with the one referred to in the case in the Supreme Court of Missouri, *supra*.

Counsel for appellees when claiming that the appellant Keokuk and Western Railroad Company acquired no rights or title coming through the lease of 1880, to the Wabash Company, or the said mortgage of March 1, 1881, so as to put it in privity with the said Secor decree, set up and pleaded in their answer (Record, p. 134), that said lease never became effective because the lessor the Missouri, Iowa and Nebraska Railway Company never complied with the conditions required of it in said proposed lease. The answer states :

" The said Missouri, Iowa and Nebraska Railway Company never did cause all holders of its bonds issued under and secured by the mortgage or deed of trust made by it to the Farmers' Loan and Trust Company on June 1, 1870, as aforesaid, to agree to surrender their bonds and to take in exchange therefor bonds to be made by the Wabash, St. Louis and Pacific Railway Company, as aforesaid, nor did it ever cause all holders of its said bonds actually to surrender the same and take in exchange therefor bonds to be made by the Wabash, St. Louis and Pacific Railway Company, as aforesaid, and its said agreement so to do was broken and never fulfilled by it."

Then on page 138 the answer further avers:

"That the whole of the contract, lease and mortgage of 1880 and 1881 was an abortive attempt to provide against the foreclosure and sale under the mortgage of June 1, 1870, and having failed the whole of said proceedings were practically rescinded by order of the United States Circuit Court for the Eastern Division of the Southern District of Iowa by a decree rendered in the said supplemental proceedings on the 8th day of July, 1886" (referring to Exhibit "E," which should be as a copy of "D," such decree).

We call the attention of the Court to page 179 and page 181 of the printed record herein, to show that said United States Court for Iowa did make such decree, which decree appointed Thomas Thacher Receiver of the Missouri, Iowa and Nebraska Railway Company, June 30, 1885, and the Wabash Receivers, Humphrys and Tutt, were ordered to deliver possession to Thacher. The United States Court at St. Louis first appointed Thacher Receiver in a case then pending in that Court of the Central Trust Company *et al.* vs. Washash, &c., Ry. Co., but the Court in Iowa claimed prior jurisdiction in the suit then pending at Keokuk of the Farmers' Loan and Trust Company vs. The Missouri, Iowa and Nebraska Ry. Co., and refused to recognize the St. Louis appointment, but appointed Thacher itself, and all proceedings, including the supplemental decree of foreclosure and sale, occurred in the Iowa Court and under the Iowa decree.

The record will show, however, that, whether the lease was ever perfected or not, the Wabash Company had possession under it for about four years, from 1880 to 1885, and that it forfeited the lease for failure to keep the conditions and covenants therein contained (p. 178, Printed Record), and the Court so adjudged.

So it is clear in any case that the Missouri, Iowa and Nebraska Railway Company, to whom and in whose name as *owner* all the taxes sought to be levied and collected was the real owner of the property, and continued to be such until possession was delivered to the appellant, December 3, 1886.

State vs. Mo. R. Bridge Co., 109 Mo., *supra*.

The case just cited adjudges that the lessor is the for all purposes of taxation notwithstanding the lease.

Similarly, the case of Rosenblatt vs. Johnson, 104 U. S., 462, adjudges that the mortgagor is the *owner*, and the tax exemption of the mortgagor would continue clear down to the sale and confirmation under the decree of foreclosure.

Resume.

1st. The original Secor decree, although brought by stockholders, judicially determined that no tax debt or tax lien could be lawfully created against the M., I. & N. property during its ownership by that company until after December, 1892, and enjoined it from paying any such taxes.

This decree was in effect a decree in favor of the Missouri, Iowa and Nebraska Railway Company against the counties and tax collecting officials and successors, and this the Court below held under decisions of this Court.

Dodge vs. Woolsey, 18 How., 331.
Memphis vs. Dean, 8 Wall., 73.

The Court below held also (p. 251) that "the decree accordingly had a direct effect on the property; it at-

tached thereto an important immunity not usually incident to ownership, that rendered ownership more valuable;" so we say that decree fixed the status of the property so that a purchaser could safely buy it without the fear of back tax liens.

2d. The titles derived through the supplemental decree of foreclosure in 1886, together with the deeds made thereafter, constitute a title acquired subsequent or *pendente lite* to the bringing of the Secor suit and under the authorities cited by the Court (Rec., p. 253) below make the appellant a privy to the Secor decree.

3d. That by reason of the railroad tax law of Missouri, the railroad company became the legal representative of all estates and interests in the property for the purpose of taxing to take all legal measures to prevent the assessment and collection of such illegal taxes, including equitable measures whereby a multiplicity of suits would be prevented. The tax sought to be collected was a tax levied against the M., I. & N. R. R. Company as owner during the time it was exempt under the Secor decree.

4th. The defenses relied on by the appellees are not good.

The decree of the Court below must, therefore, be reversed, and the prayer of complainant's supplemental bill allowed.

JOHN F. DILLON,
FELIX T. HUGHES and
THOMAS DE WITT CUYLER,
For Appellant.

APPENDIX.

Article 8, Revised Statutes of Missouri for 1889, in Force when the Taxes in Question were Levied.

ASSESSMENT AND TAXATION OF RAILROADS.

SEC. 7717. WHAT RAILROADS ARE TAXABLE. All railroads now constructed, in course of construction, or which shall hereafter be constructed in this State, and all other property, real, personal or mixed, owned, hired or leased by any railroad company or corporation in this State, shall be subject to taxation for State, county or other municipal or local purposes, and taxes levied thereon shall be levied in the manner hereinafter set forth (R. S. 1879, § 6865).

SEC. 7718. RAILROAD COMPANIES TO MAKE STATEMENT TO STATE AUDITOR. On or before the first day of January, in each and every year, the president or other chief officer of every railroad company whose road is now, or which shall hereafter become, so far completed and in operation as to run locomotive engines, with freight or passenger cars thereon, shall furnish to the State Auditor a statement duly subscribed and sworn to by said president or other chief officer before some officer authorized to administer oaths, setting out in detail the total length of their road so far as completed, including branch or leased roads, the entire length in this State, and the length of double or side-tacks, with depots, water-tanks and turn-tables, the length of such road, double or side tracks in each county, municipal township, incorporated city, town or village through or in which it is located in this State; the total number of engines and cars of every kind and description, including all palace or sleeping cars, passenger and freight cars, and all other movable property owned, used or

leased by them on the first day of June in each year, and the actual cash value thereof (R. S. 1879, § 6866; Amended Laws 1883, p. 152*a*).

SEC. 7729. DESCRIPTION OF LOCAL PROPERTY FURNISHED TO COUNTY CLERK BY WHOM.—For the purpose of carrying out the provisions of the next preceding section, the president or other chief officer of every such railroad company shall, in addition, to the statement required to be furnished to the County Clerk as prescribed in Section 7719, and at the same time furnish to each County Clerk in this State, wherever any lands or other property belonging to or controlled by such company may be located, a separate statement, under oath, for the benefit of county and other local assessors, specifically describing all lands by sections, lots, or subdivisions thereof, with township and range or the number of the entry, location or survey, or as the nature of the case may require, including machine and work-shops, round-houses and other buildings, goods, chattels and office furniture of whatever kind, situated in such county, and not included in their returns to the State Auditor and County Clerks, under Sections 7718 and 7719, owned or controlled by said company, on the first day of June in each year, and the cash value thereof (R. S. 1879, § 6877; Amended Laws 1883, 152).

SEC. 7733. COUNTY CLERK'S TO MAKE OUT TAX-BOOK. Within ten days after the County Court shall have levied the taxes on railroad property, as prescribed in the two preceding sections, the County Clerk of such county shall extend the same on a separate tax-book, to be known as the railroad tax-book, in which he shall place, first, the total valuation of the roadbed and rolling stock of each railroad company, as equalized and apportioned to such county by the State Board of Assessment and equalization, with the amount of State, county, municipal, township, city, town or village school taxes, and taxes for the erection of public buildings, and for other purposes, levied thereon by the County Court, stated separately; second, a description of each tract of land, town lot, or other real estate, including the machine and workshops and other buildings in numerical order, and personal property, as returned by local assessors, and the amount of State, county, municipal, city, town or village school taxes, and taxes for the erection of public buildings, and for other purposes, levied thereon, stating each separately, and crediting school taxes and

taxes for the erection of public buildings, and for other purposes, to the proper district or municipality (R. S. 1879, § 6881; amended, Laws 1885, p. 229).

SEC. 7734. CLERK TO CERTIFY TAXES TO RAILROAD COMPANY. It shall be the duty of the County Clerk, as soon as said taxbook is completed, to make out and certify to the secretary or chief managing officer in this State, of the proper railroad company, a statement of taxes levied on the property of such railroad company, in his county, which statement shall contain, first, the total valuation of roadbed and rolling stock as the same was equalized and apportioned to such county, and the amount of State, county, city, town or village, municipal, township and school taxes, and taxes for the erection of public buildings and for other purposes, levied thereon; second, the total valuation, as shown by the returns of local assessors, of all property in such county belonging to such railroad company, whether real, personal or mixed, including lands, warehouses, shops and other buildings, and the amount of State, county, city, town, village, school taxes and taxes for the erection of public buildings and for other purposes levied thereon (R. S. 1879, § 6882; amended, Laws 1885, p. 229).

SEC. 7736. TAXES, WHEN DUE. All taxes of whatever description, charged against any railroad company, according to the provisions of this article, due to any county, and all taxes due the State and collectible in said county, and all taxes due cities, incorporated towns, villages, municipal townships and school districts in such county, shall be due and payable to the County Collector of such county on the first day of June, of the year for which the same may be levied and charged as herein provided (R. S. 1879, § 6884; amended, Laws 1883, p. 152).

SEC. 7737. LIEN FOR TAXES. All property owned or held by any railroad company in any county in this State shall be liable for the taxes assessed and levied against such company in such county, and all State, county, city, town, village, school taxes, and taxes for the erection of public buildings and for other purposes, levied on the property of any railroad company in such county, together with all dues, penalties and costs accruing thereon, are hereby declared a prior lien in favor of the State on all the rolling stock, lands, depots and other buildings in such county; and the

fact that taxes assessed against any specific property of such company shall have been paid shall not exempt such property from being subjected to the payment of any and all other taxes due by such company, and the same are hereby declared to be a prior lien upon all such property, real and personal, which lien shall have precedence of all other liens, judgments and decrees of whatever kind, and shall be enforced as hereinafter provided (R. S. 1879, § 6885; amended, Laws 1885, p. 229).

SEC. 7740. WHEN COLLECTOR SHALL MAKE SEIZURE FOR TAXES. If any railroad company shall fail to pay to the proper Collector of any county at least one-half of all taxes assessed and levied against such railroad company in said county, on or before the first day of October next after the same shall have become due and payable, or if such company shall fail to pay to said Collector all of the taxes levied on the property of such company in said county, on or before the first day of December next after the same shall have become due and payable, then it shall be the duty of said Collector, upon such default, to immediately levy upon, seize and sell any or all of the rolling stock and other personal property of whatever description of such railroad company liable for taxes in said county, in the same manner as personal property is or may be required to be seized and sold under executions on judgments at law, and the railroad tax-book delivered to the Collector, as hereinbefore provided, shall for this purpose have the force and effect of an execution, and shall be full and sufficient authority for the Collector to make such seizure and sale (R. S. 1879, § 6887).

SEC. 7741. SUITS FOR DELINQUENT TAXES. If, on the first day of January of any year, any taxes levied under the provisions of this article in any county remain delinquent and unpaid, it shall be the duty of the Collector of such county, notwithstanding the right of seizure and sale of personal property, to proceed at once to enforce the lien of the State against the property of said company, and to compel the payment of such taxes by suit in the Circuit Court of said county; and in all such suits the general laws of the State as to practice and proceedings in civil cases shall apply as far as applicable and not inconsistent with this article (R. S. 1879, § 6888).

SEC. 7742. WHEN SUITS TO BE TRIED—FORM OF PE-

TITION. All suits commenced under the provisions of this article shall be tried at the return term of the writ, unless continued for good cause, and shall be prosecuted in the name of the State at the relation and to the use of the Collector of the proper county, and the petition may be in the following form:

In the Circuit Court of County, Term, 18 , State of Missouri, at the relation and to the use of , Collector of the Revenue of County, plaintiff, against , defendant. The State of Missouri, suing at the relation and to the use of the Collector of the Revenue within and for the County and State aforesaid; that defendant is a corporation organized and existing according to law; that on or about the day of , 18 , the defendant was the owner (or had control of, as the case may be) of the following railroad property, to wit: (here describe the lands, roadbed and other property in the county), which was then and there subject to taxation for State, county, school and other purposes; that there was legally assessed and levied against such property the aggregate sum of dollars; that of the taxes so assessed and levied there is now due and unpaid for State purposes the sum of dollars; for county purposes the sum of dollars; for school purposes in said county the sum of dollars; for city, town and other municipal purposes the sum of dollars; amounting in the aggregate to the sum of dollars; which sum the defendant has failed to pay as required by law; that plaintiff is entitled to recover of defendant a penalty (stating the amount) on the amount so due and unpaid, from the first day of January, A. D. 18 , until the same shall be paid. Plaintiff further says that the taxes so assessed and levied are, by virtue of the laws of this State, a prior lien on said roadbed and real estate and other property. Wherefore, plaintiff prays judgment for the said sum of dollars and the penalty thereon, until the same shall be paid, and for reasonable attorney's fee and costs of suit: that the same be declared a lien in favor of the State of Missouri, and that said lien be enforced and said real estate and roadbed and other property, or so much thereof as may be necessary, be sold to satisfy said judgment and costs, and that a special *fieri facias* be issued thereon against said property.

R. S., 1879, § 6889, Amended. Laws 1883, p. 152.

SEC. 7743. CLERK TO ISSUE SPECIAL FIERI FACIAS, WHEN. Upon the rendition of such judgment, if against the defendant, the Clerk of said Court shall issue a special *fieri facias*, describing the property against which

such judgment is rendered and directed to the Sheriff, commanding him to advertise and sell said property, or so much thereof as may be necessary to pay said judgment and subsequent costs, in the same manner as Sheriffs may do under ordinary executions; and said Sheriff shall, upon such sale, execute and deliver to the purchaser of such railroad property a deed of conveyance therefor, which shall be acknowledged before the Circuit Court as in ordinary cases, and shall convey the title in fee to such purchaser of the property therein named, which deed shall be *prima facie* evidence of title, and that the things therein stated are true. The net proceeds of said sale shall be paid over to the County Collector, and by him credited to the proper funds (R. S. 1879, § 6890).

Office Supreme Court U. S.
FILED.
DEC 18 1893
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

THE KEOKUK AND WESTERN RAILROAD COMPANY, *Plaintiff in Error,*
vs.
THE STATE OF MISSOURI at the Relation of Wm. H. Wine, Collector, *Defendant in Error,* } No. 182.

In Error to the Supreme Court of the State of Missouri.

THE KEOKUK AND WESTERN RAILROAD COMPANY, *Appellant,*
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI, *et al., Appellees.* } No. 183.

Appeal from the Circuit Court of the United States for Northern Division, Eastern District of Missouri.

THE KEOKUK & WESTERN R. R. CO., *Appellants,*
vs.
SCOTLAND COUNTY COURT *et al., Appellees.* } No. 414.

Appeal from Circuit Court of the United States for Eastern Division of the Eastern District of Missouri.

Statement and Brief for Appellees, The County Court and Collector of Scotland County, Missouri.

JOHN C. MOORE,
Attorney for Defendant in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. 182.

THE KEOKUK AND WESTERN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF MISSOURI AT THE RELATION OF WILLIAM H. WINE, COLLECTOR, DEFENDANT IN ERROR.

Brief for Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

STATEMENT.

The 9th section of the charter creating the Alexandria and Bloomfield Railroad Company is in these words:

"9th. The stock of said company shall be exempt from taxation for the period of twenty years after its completion."

It was dated February 9, 1857.

Section 7 (p. 371, Revised Statutes of Missouri, 1855), in force when the charter was granted, is as follows:

"SEC. 7. The charter of every corporation that shall hereafter be granted by the legislature, shall be subject to alteration, suspension and repeal, in the discretion of the legislature."

Section 1 (p. 379, same volume) is as follows:

"SECTION 1. No charter of any corporation granted by the legislature of this State, shall be altered, suspended or repealed, by such legislature, unless proof be made satisfactory to the legislature, that notice of such proposed alteration, suspension or repeal, has been given to the president and secretary of such corporation for at least one month next before the session of the legislature, at which such alteration, suspension or repeal, will be proposed."

The charter did not negative this reserved power.

Chapter 39 of this volume is devoted to railroads, but plaintiff in error relies on the charter for authority to be a corporation and not on this chapter.

The charter bears date a year and two months later than the chapter 39.

This company, with its name changed to Alexandria and Nebraska City Railroad Company, on May 3, 1870, pursuant to act of March 2, 1869 (Laws of Missouri, 1869, p. 75), consolidated with an Iowa corporation, and thus formed the Missouri, Iowa and Nebraska Railway Company. (Printed Record, p. 15.)

February 27, 1875, the following act was passed by the Missouri legislature:

"Whereas, it appears that more than thirty days' previous notice has been given to the president and secretary of the Missouri, Iowa and Nebraska Railway Company, of the intended application to the legislature of this State, at this session, for amendments to the charter of the Alexandria and Bloomfield Railway Company, approved February ninth, A. D. 1857, as hereinafter provided, and that the Missouri, Iowa and Nebraska Railway Company have become successors to the said Alexandria and Bloomfield Railway Company; and

"Whereas, the counties of Clark, Scotland and Schuyler, through which said company's road passes, have contributed largely to the construction of said road; and

"Whereas, the circumstances existing at the time of the granting of said charter have greatly changed, and the wants and necessities of the State, and right and justice, require that all property in this State, not exempted from taxation by an irrepealable contract, should bear their due proportion of the public burden; therefore,

"*Be it enacted by the General Assembly of the State of Missouri, as follows:*

"SECTION 1. The ninth section of the act entitled 'An act to incorporate the Alexandria and Bloomfield Railway Company' approved February 9, A. D. 1857, is hereby repealed.

"SEC. 2. All the property of the Missouri, Iowa and Nebraska Railway Company, whether real, personal or mixed, and the stock of said company, shall hereafter be subject to taxation for all purposes for which other property in this State is liable to be taxed.

"SEC. 3. All the laws now in force for assessing and collecting taxes on railroads shall apply and be in force as to the Missouri, Iowa and Nebraska Railway Company, and its officers, with like force and effect as to other railroads in this State.

"SEC. 4. This act shall take effect and be in force from and after its passage.

"Approved February 27, 1875."

Laws of Mo., 1875, p. 437.

The question is, Did this repeal the exemption contract?

2.

July 4, 1865, a constitution was adopted containing the following clauses:

"ART. VIII, SEC. 4. Corporations may be formed under general laws, but shall not be created by special acts, except for municipal purposes. All general laws, and special acts passed pursuant to this section may be altered, amended or repealed."

"ART. IV, SEC. 27. The General Assembly shall not pass any special laws * * * exempting any property of any named person or corporation from taxation. The General Assembly shall pass no special law for any case for which provision can be made by general law."

"ART. XI, SEC. 16. No property, real or personal, shall be exempt from taxation, except such as may be used exclusively for public schools, and such as may belong to the United States, to this State, to counties, or to municipal corporations, within this State."

ART. XI, SEC. 3. "All statute laws of this State now in force not inconsistent with this constitution, shall continue in force, until they shall expire by their own limitation or be amended or repealed by the General Assembly," &c.

March 2, 1869 (Laws of Mo., 1869, p. 75), the first act ever passed by the legislature to authorize a railroad corporation of the State to consolidate with one of another State was passed.

The plaintiff in error relies on the fourth section of this act to transfer the exemption from the chartered to the consolidated company. It is as follows:

"SEC. 4. Any such consolidated company shall be subject to all the liabilities, and bound by all the obligations of the company within this State, which may be thus consolidated with one in the adjacent State, as fully as if such consolidation had not taken place; and shall be subject to the same duties and obligations to the State, and be entitled to the same franchises and privileges under the laws of this State, as if the consolidation had not taken place."

Under this act the consolidation was effected, and the question is, Was this consolidated company entitled to the exemption?

3.

The consolidated company, June 1, 1870, mortgaged its road to the Farmers' Loan and Trust Company (see answer, p. 6, Record). This mortgage was ultimately foreclosed

the plaintiff in error deriving title through this mortgage and the foreclosure sale.

Plaintiff in error pleads an adjudication (65 Mo., 123) between the county of Scotland and the consolidated company for taxes of 1872 and a decree (9th Federal Reporter, 809) of injunction for the year 1881 and previous years, but these actions were instituted after the mortgage was given and the mortgagee was not made a party to either. The question is, Is there such a privity in estate as to enable plaintiff in error to plead these cases as adjudications?

4.

No contract with the consolidated company is claimed, but the claim is that the exemption passed by the consolidation from the chartered to the consolidated company. The Missouri supreme court decided that it did not pass. The question is, Was this not a decision of the case on a question other than Federal question and sufficient of itself to decide the case?

BRIEF OF ARGUMENT.

The charter granted to the Pacific railroad in 1849 was subject to the power of the legislature to alter, suspend, or repeal all charters thereafter granted.

Pacific R. R. *vs.* Renshaw, 18 Mo., 210.
Pacific R. R. *vs.* Hughes, 22 Mo., 291.
Hope Mutual Fire Ins. Co. *vs.* Beckman, 47 Mo., 93.
In Re David R. Powell, 5 Mo. App., 220.

To same effect are:

Where the State reserves the right to alter, amend, or repeal, and the charter does not negative the reserved right, its exercise by the State is not a violation of a contract.

Louisville Water Co. *vs.* Clark, 143 U. S., 1.
Tomlinson *vs.* Jessup, 15 Wall., 454.
Railroad Company *vs.* Maine, 96 U. S., 499.
Railroad Co. *vs.* Georgia, 98 U. S., 359.
Hoge *vs.* Railroad Co., 99 U. S., 348.
Sinking Fund Cases, 99 U. S., 700.
Greenwood *vs.* Railroad Co., 105 U. S., 13.
Close *vs.* Glenwood Cemetery, 107 U. S., 466.
Water Works *vs.* Schottler, 110 U. S., 347.
Louisville Gas Co. *vs.* Citizen's Gas L. Co., 115 U. S., 683.
Gibbs *vs.* Gas Co., 130 U. S., 396.
R'y Co. *vs.* Sioux City, 138 U. S., 98.

If a general statute reserves the power to alter charters, a charter subsequently granted is subject to this power.

Railroad Co. *vs.* State, 54 Ga., 501.
Fort Plain Branch *vs.* Smith, 30 N. Y., 44.
Suydam *vs.* Moore, 8 Barb., 358.
White *vs.* R. R. Co., 14 Barb., 559.
Hyatt *vs.* McMahon, 25 Barb., 457.
Iron City Bank *vs.* Pittsburgh, 37 Pa. St., 340.
State *vs.* Person, 32 N. J., 134.
State *vs.* Commissioners, 37 N. J., 228.
Griffin *vs.* Ky. Ins. Co., 3 Bush., 592.

If the power is reserved the legislature may repeal, alter, or modify a charter by a general statute, or it may be done

by change in the constitution, and a creditor cannot object, nor is the consent of the corporation necessary.

In Re Lee's Bank, 21 N. Y., 9.
Read *vs.* Frankfort Bank, 23 Me., 318.
Bangor R. R. Co. *vs.* Smith, 47 Me., 34.
Att'y Gen. *vs.* R. R. Co., 35 Wis., 425.
Crease *vs.* Babcock, 40 Mass., 334.
Mayor *vs.* N., &c., R. R. Co., 109 Mass., 103.
Hyatt *vs.* Whipple, 37 Barb., 595.
Hyatt *vs.* Esmond, 37 Barb., 601.
Perrin *vs.* Oliver, 1 Minn., 202.
Butler *vs.* Walker, 80 Ill., 345.
State *vs.* Comsrs., 38 N. J., 472.
Del. R. R. Co. *vs.* Thorpe, 5 Har., 454.
Stephen *vs.* Smith, 20 Vt., 160.
Laren *vs.* Pennington, 1 Paige, 102.
Ferguson *vs.* Minn., &c., Bank, 3 Sneed, 609.
West Wis. R'y Co. *vs.* Supervisors, 93 U. S., 595.
Beer Co. *vs.* Mass., 97 U. S., 25.

From this list of decisions we hold that the adoption of the constitution of 1865 operated to repeal the exemption. If so, there was none to pass when the consolidation afterward was made.

The consolidated company resulted from the constituent companies taking steps under the consolidation act. This act was a general law.

The consolidated company was formed under this law. The legislature could not at that time, March 2, 1869, create corporations by special acts, for the constitution forbade it; therefore it was formed under the general law. It was subject to the reservation in the constitution of alteration, suspension, or repeal. If the constitution itself did not repeal the exemption, it was done by act of 1875, quoted above in full.

New York *ex rel.* Schurz *vs.* Cook, 13 S. C. R., 645.
Hamilton Gas Light and Coke Co. *vs.* City of Hamilton, 13 S. C. R., 90.

2.

It was four years after this constitution became operative before the State granted the authority to consolidate with a road of another State. Such act must necessarily have been constitutional in order to be effective. The constitution forbid the legislature to grant an exemption from taxation; hence the act of March 2, 1869, did not grant it and could not grant it. But the consolidated company was a new company.

Atlantic and Gulf R. R. Co. *vs.* Ga., 98 U. S., 359.
Maine Central R. R. Co. *vs.* Me., 96 U. S., 499.
Memphis and Little Rock R. R. Co. *vs.* Berry, 112 U. S., 609.
St. Louis, Iron Mountain and Southern R'y Co. *vs.* Berry, 113 U. S., 465.

The old corporations had ceased to exist.

This Court said, in Memphis and Little Rock Railroad Co. *vs.* Berry, *supra*: "The franchise of becoming and being a corporation in its nature is incommunicable by the act of the parties and incapable of passing by assignment." Hence the old corporations did neither of them pass and become the consolidated one, but it became a new one; and *when* such new one was neither nor both of the old corporations. It was formed under the general laws of the State. It was not granted an exemption, because the legislature was by constitution forbidden to grant it. The exemption died with the old company.

Morgan *vs.* Louisiana, 93 U. S., 217.
Wilson *vs.* Gaines, 103 U. S., 417.
Louisville and Nashville R'y Co. *vs.* Palmes, 109 U. S., 244.

The mortgage was made June 1, 1870. The trustee, the Farmers' Loan and Trust Company, and the bondholders, whom this deed of trust secured, were not parties to the case of Scotland County *vs.* The Missouri, Iowa and Nebraska Railway Company, reported in 65 Mo., 123, nor in the stockholders' case of Secor *et al. vs.* Singleton *et al.*, reported in 9 Federal Reporter, 809. But the mortage antedated these suits, and sale under the foreclosure of it was after they were decided.

"Mortgagees are not bound by judgments or decrees rendered against the mortgagor and affecting the mortgaged premises in suits begun by third parties subsequent to the execution of the mortgage unless the mortgagees are themselves made parties or some one authorized to represent them, like trustees of mortgage bondholders are made parties to the litigation."

"The doctrine of privity cannot be invoked to bind mortgagees by decrees against the mortgagor in suits between him and third parties unless the mortgage was executed *pendente lite* or after the decree."

Campbell *vs.* Hall, 16 N. Y., 575.
Scotes *vs.* King, 110 Ill., 456.
Dooley *vs.* Potter, 140 Mass., 49.
Cutter *vs.* Jones, 52 Ill., 84.
Zoeller *vs.* Riley, 100 N. Y., 102.
Doe *vs.* Derby, 1 Ad. & E., 783.
Bigelow on Estoppel, 5 ed., pp. 142 and 143.

And a mortgagee is privy in estate with a mortgagor only in respect to the estate as it existed when the mortgage was executed.

Mathes *vs.* Cover, 43 Ia., 512.

The purchaser at a sheriff's sale made on execution in tax suit acquires only the right, title, and interest of the defendants in the tax suit.

Powell *vs.* Greenstreet, 95 Mo., 13.
Watt *vs.* Donnell, 80 Mo., 196.
Boatman's Savings Bank *vs.* Grewe, 84 Mo., 478.
Evans *vs.* Robberson, 92 Mo., 192.
Graves *vs.* Ewart, 99 Mo., 13.

And persons not made defendants are not affected by the judgment.

Graves *vs.* Ewart, 99 Mo., 13.

The plaintiff in error is therefore not in position to plead the suits relied on as adjudications between the parties to this action.

JOHN C. MOORE,
Attorney for Defendant in Error.

Brief for Appellees, The County Court of Scotland County, Robert M. Thomson, Joseph E. Billups, W. W. Buford, and Joel Ewing.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1893.

THE KEOKUK AND WESTERN RAILROAD COMPANY, *Appellant*,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI, *et al.*, *Appellees*. } No. 183.

Appeal from the Circuit Court of the United States for Northern Division, Eastern District of Missouri.

Hon. Amos M. Thayer, district judge, sitting in circuit court.

John C. Moore, attorney for Scotland County, appellee.

STATEMENT FOR APPELLEES.

February 13, 1888, appellant filed its bill of complaint in the circuit court for the northern division of the eastern district of Missouri and obtained temporary restraint on the taxing officers of the counties of Scotland, Clark, and Schuyler from collecting taxes from complainant.

The bill alleged a grant of exemption February 9, 1857, to the Alexandria and Bloomfield Company, change of name to Alexandria and Nebraska City Railroad Company, and consolidation May 3, 1870, with the Iowa Southern Railway Company, by which was formed the Missouri, Iowa and Nebraska Railway company; mortgage by this last-named company in 1870 of the entire road to Farmers' Loan and Trust Company; decree of foreclosure and sale under this

mortgage, and ultimate purchase by complainant, all of which is admitted.

Complainant alleges that by consolidation the exemption passed to the consolidated company, which is denied; pleads adjudication (65 Mo., 123, and 9 Fed. Rep., 809) as between these parties, which is denied.

The answer to the bill denied the jurisdiction of the circuit court, because this is a suit against the State of Missouri by a citizen of Iowa, and pleaded other suits pending for the same cause of action; also that the property in Scotland county was not acquired from the Alexandria and Nebraska City Company, but that right of way was afterward obtained and road built thereon.

JURISDICTION.

At page 29, 6th line, of the Record appellant in its bill pleads:

"That the said collectors are in possession of the said tax books for said counties, with taxes extended therein as aforesaid, and are demanding, threatening, and attempting to enforce the collection of said taxes in all the years aforesaid and are threatening to *seize* and *sell* the property of your orator in said counties and State for the purpose of satisfying said alleged to-be-due taxes, *and are threatening and proposing, under the forms of the laws of said State, to institute suits against your orator in the courts of competent jurisdiction in the said counties and to prosecute the same with a view of enforcing the said illegal and unjust taxes so pretended to be levied,*" &c.

I have italicized that portion in reference to suits.

Further down the page prayer is asked for writ of injunction to prevent "collecting or attempting to collect, *either by distress, seizure, and sale* of your orator's property, *by institution and prosecution of any suits in any of the courts of the State of Missouri,*" &c.

These appellees, in answering, page 39, eleventh clause, say:

"*Defendants say that they have not threatened to seize and sell the property of complainant nor are they now threatening to do so, but declare their intention to be not to seize and sell said property, but to pursue in courts of proper jurisdiction the trial of such suits for taxes as the State of Missouri has instituted or may institute,*" &c.

Here, then, is a direct disclaimer of everything except to pursue the matter by suit in the name of the State.

Art. 8, cap. 145, R. S. of Mo., 1879, is devoted to the taxation of railroads (2d vol., pp. 1350 to 1358). Briefly, it provides for assessment by a State board and levy of State taxes. The auditor of State then reports the assessment to the county court and that court levies the local taxes. The county clerk makes a tax book and puts same in collector's hands. When the taxes are delinquent the collector must sue in the name of the State. Sec. 6889 prescribes the form of petition. Sec. 6893 requires the prosecuting attorney of the county to prosecute the suits, and section 6897 is as follows:

"If any judge or clerk of any county court, collector, or State auditor shall fail to discharge the duties imposed upon him under this article, in the manner and time required therein, he shall be liable to a fine of not less than one hundred nor more than five hundred dollars, to be recovered by civil action in any court of competent jurisdiction."

We admit that defendants may be enjoined from any actual seizure or personal violence in attempting to collect an illegal tax, where there is a contract of exemption, but we allege that where the State law requires suit, and certain persons only are named to bring suit, and where they have no interest in the suit, but are acting as agents of the State, and the State has the only interest in the suit, that to enjoin those persons from suing is to enjoin the State itself.

The very able and exhaustive discussion of this question by Mr. Justice Matthews, the concurring opinion by Mr. Justice Field, and the dissenting opinion by Mr. Justice Harlan in the case of *Ex parte* Ayers, 123 U. S., 443, would seem to clearly settle this position. From the concurring opinion I quote:

"There is a wide difference between restraining officers of the State from interfering in such cases with the property of the citizen and restraining them from prosecuting a suit in the name of the State in her own courts to collect an alleged claim. Her courts are at all times as open to her for the prosecution of her demands as they are open to her citizens for the prosecution of their claims."

In the main opinion a clear distinction is taken as to the effect of a State passing an act impairing the validity of contracts where the contract is between individuals and where it is between an individual and the State. When the contract is between the individual and the State this court holds that no suit will lie to enforce it, nor will injunction lie to restrain the State from doing acts in violation thereof, for that would be seeking enforcement by restraining a breach. When the persons by seizure and sale, or by other physical acts, attempt to justify by reason of the void act of the legislature, they fail therein, and it then becomes apparent that they are not the agents of the State, but mere wrong-doers, the void act of the legislature not constituting a justification; but when they are commanded by the void act of the State to sue, that defense may be set up in the court, and as such question is a Federal one, jurisdiction is preserved all along until final decision in this Court. But where the State has not sued and the person claiming the benefit of the contract will sue the officers charged with the duty of suing in the State courts to restrain them from bringing suits, such restraint operates upon the State to prevent it filing the suits for the demands it claims. This Court says:

"To secure the manifest purposes of the constitutional exemption guarantied by the eleventh amendment requires that it should be interpreted, not literally and two narrowly, but fairly, and with such breadth and largeness as effectually to accomplish the substance of its purpose. In this spirit it must be held to cover, not only suits brought against a State by name, but those also against its officers, agents, and representatives, where the State, though not named as such, is, nevertheless, the only real party against which alone relief is asked, and against which the judgment or decree effectively operates."

Were the appellees in this cause to insist that they were intending to seize and sell the property of appellant, then it would be the duty of the circuit court to inquire whether there is a contract of exemption, and if the finding should be that such contract exists for appellant's benefit, then restraint should issue, for appellees in that case would be individual trespassers and not agents of the State: but where the answer eliminates all intention but the intention to sue for the taxes, appellant has its remedy at law in defending against the suits by setting up the contract. As the courts along the line of appeals will at all times have jurisdiction until finally decided in this Court, the remedy is ample and no right is infringed. That such decisions will be right is declared in the same opinion when the Court says:

"But it is not to be assumed in advance either that such questions will arise or that, if they arise, they will be erroneously decided."

Wherefore I conclude that the circuit court was without jurisdiction, because this is a suit against the State of Missouri by a citizen of Iowa. I will close this branch of the case by quoting the closing words of the third syllabus of that celebrated case:

"Held, that under the provisions of the eleventh amendment to the Constitution such an action would not lie although the laws in question might impair contract obligation."

The remaining considerations of this case are like that of 182, just argued and submitted.

JOHN C. MOORE,
Attorney for Scotland County, Appellees.

IN SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1893.

THE KEOKUK & WESTERN R. R. CO., *Appellants,*
vs.
SCOTLAND COUNTY COURT *et al., Appellees.*

CASE 414.

Statement for Appellees, Scotland County, Defendants.

This suit was commenced by bill of revivor in the case of Secor *et al. vs.* Singleton *et al.* in the circuit court for the eastern division of the eastern district of Missouri by appellants.

The bill alleged succession to the Missouri, Iowa and Nebraska Railway Company, privity of estate, and right to the benefits of the decree. This was after two ineffectual attempts to punish these appellees for contempt for alleged violation of the decree.

The answer of these appellees denied all the allegations of the bill and plead that the court was without jurisdiction for two reasons:

1st. That the original bill of complaint in Secor *vs.* Singleton was filed to enforce an alleged right which should have been asserted by the corporation (the Missouri, Iowa and Nebraska Railway Company), but the bill failed to allege the facts required of bills so constituted by rule ninety-four of equity practice for courts of the United States, and that the court, therefore, being without original jurisdiction, should dismiss the cause and proceed no further.

2d. That the State of Missouri was the real party in interest, and that these defendants are only defending as agents of the State and have no personal interest in the result of this suit: wherefore the court was without jurisdiction in the cause.

The principal allegation of this answer, however, was a long and detailed statement of facts to show that appellant was not in privity with the Missouri, Iowa and Nebraska Railway Company, so as to plead the benefits of this decree.

The court found for these appellees and against appellant on this question. The exhibits on file are numerous and long, but they clearly sustain the finding of the circuit court.

JURISDICTION.

Having in case 183 considered the question of jurisdiction as involving a suit against the State, I will here consider the question of jurisdiction as involving rule 94 of equity and the act of Congress on which the same is founded.

This suit was brought by stockholders of the Missouri, Iowa and Nebraska Railway Company, citizens of other States than Missouri, against their own company, which is a Missouri company and would have to sue in the State court and the taxing officers to enforce the exemption claimed. The exemption was claimed by their company and should have been asserted by it.

The rule requires that such a bill shall contain the allegation "that the suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance. It must also set forth with particularity the efforts of the plaintiff to secure such action as he desires on the part of the managing directors or trustees, and if necessary of the shareholders, and the cause of his failure to obtain such action." The rule was promulgated one month after the amended bill was filed.

but it was founded on a previous act of Congress and on several cotemporaneous decisions of this Court, which had established it, not only as a rule of practice, but the legislated and decided law of the United States.

It had its origin in collusive abuse of jurisdiction.

The amended bill alleges (p. 25, Record):

"That your orators have demanded of said railway company, through its said officers and its board of directors, that they should institute the necessary suits or proceedings, either in law or equity, such as were best calculated to protect the interests of your orators and others the holders of the stock of said company, but that said company, its officers and directors, neglect and refuse to take any steps to protect the interests of your orators and the other holders of said stock; that while the said officers and company insist that said tax is unjust, oppressive, and illegal they refuse to take the responsibility of contesting the same in the courts of proper jurisdiction and have declared their intention not to resist the collection of said taxes, although they well know the same to be destructive of the franchises of said company and that if enforced will wholly destroy and annul the value of the stock so held and owned by your orators."

There is no allegation that the suit is not a collusive one. It does not set forth with particularity their efforts to secure the desired action and does not allege a recorded resolution of the board of directors refusing the request. It was simply a hooded effort to impose on the jurisdiction of the court, for the company was a citizen of Missouri and could not sue in this cause in a Federal court.

The act of Congress bears date March 3, 1875. (18 St. at Large, p. 472, c. 137.)

In Hawes *vs.* Oakland, 14 Otto, 450, and in Detroit *vs.* Dean, 106 U. S., 537, this Court quotes the section of statute alluded to. A comparison of the bill in Hawes *vs.* Oakland with the bill in the Secor case, the decree in which appellant seeks to revive, will show parallel allegations as to the efforts to induce action by the board of directors, and both

equally lack the allegation that no collusion exists to make a case to give a Federal court jurisdiction.

The final decree was rendered May, 1882 (p. 39, Record).

Rule promulgated January 23, 1882.

Hawes *vs.* Oakland decided January 16, 1882.

The act of Congress was then seven years old.

The effort to impose jurisdiction on the Federal courts by collusion is severely animadverted upon in Hawes *vs.* Oakland, *supra*, and there it is announced:

"It must also be made to appear that the plaintiff has made an earnest effort to obtain redress at the hands of the directors and shareholders of the corporation."

And:

"That the suit is not a collusive one to confer on a court of the United States jurisdiction in a case of which it would otherwise have no cognizance."

The act of Congress requires the circuit court to desist from the case whenever it discovers the facts in the act mentioned.

It seems that this character of fraud is against the court as much as against the litigants injuriously affected, and that the law and rule 94 have been so framed as to make it affirmatively appear that there is no fraud, the absence of the allegations, perhaps, raising the presumption of fraud. The allegations then are jurisdictional, as much so as allegations of citizenship, amount, and subject-matter.

Appellant answers that the decree being final this question cannot be now raised, but a jurisdictional question may be at any time raised, and even in a collateral proceeding or in another case, where, if it be established that the court was proceeding without jurisdiction, the judgment or decree does not bind. This we hold to be the situation in this cause. It was first raised in the court below in the return.

of these respondents to amended information for contempt of the court, charging violation of the decree (pp. 69 and 70, Record), and afterward in the answer to amended bill of revivor herein.

Wherefore I conclude that the decree never did have any validity or force for want of jurisdiction in the court below.

On the second subject of jurisdiction, that this was a suit against the State by citizens of other States, I refer to what is already said in case 183.

One subject alone remains: Is the appellant in such privity of estate with the Missouri, Iowa and Nebraska Company as to have the decree revived in its favor?

This was the great issue before the lower court.

June 1, 1870, the Missouri, Iowa and Nebraska Company made a mortgage or deed of trust to the Farmers' Loan and Trust Company of New York, trustee, to secure an issue of bonds not to exceed six million dollars. Three million and twenty-five thousand dollars were actually issued. Default having been made in the payment of interest, foreclosure was had in the circuit court of the United States at Des Moines October 22, 1880, and in 1886 sale was effected under the decree, appellant becoming the ultimate purchaser. There was much intermediate and supplementary matter, but all founded upon the original mortgage. (See many exhibits.)

The Farmers' Loan and Trust Company and the bondholders which the mortgage secured were not made parties to the case of Secor *et al. vs.* Singleton *et al.*

A mortgagee is an essential party to any proceeding affecting his rights to the mortgaged premises. (Jones on Mortgages, 1 vol., 2 ed., sec. 709.)

In suits for the enforcement of the State's lien for taxes, in cases where there shall be a deed of trust on record, if the

cestui que trust, is not made a party, his rights are in nowise affected.

Stafford *vs.* Fizer, 82 Mo., 393.
Cowell *vs.* Gray, 85 Mo., 169.
Gitchell *vs.* Kreidler, 84 Mo., 472.
The Boatman's Savings Bank, 84 Mo., 477.
Myers *vs.* Bassett, 84 Mo., 479.

Where the mortgagee is a privy, the purchaser at foreclosure sale becomes a privy; but if the mortgage antedates suits and judgments against the mortgagor in reference to the mortgaged property to which the mortgagee or trustee is not a party there is no privity of estate that will bind the mortgagee nor purchaser under the foreclosure as to such judgments.

The privity extends to the estate as it existed at time of the mortgage being made, and does not include subsequent liens of any character unless the mortgagee is made a party thereto.

In other words, there has been no day in court.

JOHN C. MOORE,
Attorney for Scotland County, Appellant.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

THE KEOKUK AND WESTERN RAILROAD COMPANY, *Appellant*,
vs.
SCOTLAND COUNTY *et al.*, *Appellees.*
} In Equity. No. 183.

Appeal from Circuit Court United States, Northern Division, Eastern District, of Missouri.

THE KEOKUK AND WESTERN RAILROAD COMPANY, *Appellant*,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI; BENJAMIN F. BOWEN, AS COLLECTOR OF REVENUE OF SAID COUNTY, *et al.*, *Appellees.*
} In Equity. No. 414.

Appeal from Circuit Court of the United States for Eastern Division of the Eastern District of Missouri.

Statement and Brief for Appellees, The County Court and Collector of Clark County, Missouri.

JOHN A. WHITESIDE,
T. L. MONTGOMERY,
F. L. SCHOFIELD,
For Above Appellees.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

THE KEOKUK AND WESTERN RAILROAD COMPANY, *Appellant*, *vs.* SCOTLAND COUNTY *et al.*, *Appellees.*	In Equity. No. 183.

Appeal from Circuit Court United States, Northern Division, Eastern District, of Missouri.

THE KEOKUK AND WESTERN RAILROAD COMPANY, *Appellant*, *vs.* THE COUNTY COURT OF SCOTLAND COUNTY, MISSOURI; BENJAMIN F. BOWEN, AS COLLECTOR OF REVENUE OF SAID COUNTY, *et al.*, *Appellees.*	In Equity. No. 414.

Appeal from Circuit Court of the United States for Eastern Division of the Eastern District of Missouri.

Statement and Brief for Appellees, The County Court and Collector of Clark County, Missouri.

STATEMENT.

In case No. 183 the complainant, who is the appellant in this court, asserting that its railway property was absolved from taxation by virtue of an immunity granted by legislative enactment, brought its bill to enjoin the county courts

and taxing officers of the several counties through which its railroad runs from levying or collecting State, county, or municipal taxes against such railway property. (Original bill, Rec., p. 2; amendment to bill, Rec., p. 19; printed substitute for bill and amendment, Rec., p. 25.)

Separate answers were filed by the officers of Clark and Scotland counties respectively (Ans. of Clark Co., Rec., p. 55). Issues having been made up by the filing of the usual replication to each of these separate answers (Rec., pp. 70 and 71), the whole cause was submitted upon the pleadings and proofs on the hearing of motion for injunction *pendente lite* (Rec., p. 72), resulting in a final decree dismissing complainant's bill (Rec., p. 193), Thayer, J., delivering a written opinion. (Rec., p. 193.)

From which final decree complainant has appealed to this court.

Case No. 414 is an appeal by the same appellant from a decree of the circuit court for the eastern division of the eastern district of Missouri, dismissing its bill brought to revive in its favor a decree enjoining the appellees from levying or collecting taxes against the same railroad entered in 1882 in the case of Secor *et al. vs.* Singleton *et al.*

The salient and controlling facts disclosed by the records in both cases, it is believed, will be found to be as follows:

By special act approved February 9, 1857 (Acts 1856–'57, p. 94), the legislature of the State of Missouri incorporated James Cowgill and others under the corporate name of the "Alexandria and Bloomfield Railroad Company," and authorized the location and construction of a railroad from the city of Alexandria, in Clark county, to a crossing of the State boundary line in the direction of the town of Bloomfield, in the State of Iowa. The act required that the construction of said road should be commenced within ten years after the passage of the act and that it should be completed in ten years thereafter.

Section 9 of this act reads as follows:

"SEC. 9. The stock of said company shall be exempt from taxation for the period of twenty years after its completion."

An act amendatory of the above act approved February 19, 1866 (Acts 1866, p. 222), authorized a change of corporate name to the "Alexandria and Nebraska City railroad," and also authorized an extension to Nebraska City, Nebraska.

A new constitution was adopted by the people of the State of Missouri which by its provisions went into effect on July 4, 1865.

Section XVI of art. XI of this organic law provided as follows:

"No property, real or personal, shall be exempt from taxation, except such as may be used exclusively for public schools, and such as may belong to the United States, to this State, to counties, or to municipal corporations, within this State."

Section IV of art. VIII of the same instrument reads as follows:

"Corporations may be formed under general laws, but shall not be created by special acts, except for municipal purposes. All general laws, and special acts passed pursuant to this section may be altered, amended or repealed."

By an act approved March 2, 1869 (Acts 1869, p. 75), the Missouri legislature authorized the consolidation of railroad companies in this State with companies owning connecting railroads in adjoining States.

Section one of said act reads as follows:

"SEC. 1. That any railroad company organized under the general or special laws of this State, whose track shall at the line of the State connect with the track of the railroad of any company organized under the general or special laws of any adjoining State, is hereby authorized to make and enter into any agreement with such connecting company for the consoli-

dation of the stock of the respective companies whose tracks shall be so connected, making one company of the two, whose stock shall be so consolidated upon such terms and conditions and stipulations as may be mutually agreed between them, in accordance with the laws of the adjoining State in which the road is located, with which connection is thus formed."

Section two provides for the manner of effecting such consolidation by a vote of the majority of the stock in the companies to be consolidated at a meeting called expressly for such purpose.

Section three provides, among other things, as follows:

"SEC. 3. When the terms of said consolidation shall have been agreed upon, as above stated, and approved in one or the other of the modes above set forth, it shall be competent for the board of directors in each of said connecting companies to carry the same into effect, and adopt by a resolution a new corporate name for the company, which shall be formed by the consolidation, and to call in the certificates of stock then outstanding in each company, and exchange them for stock in the new company, as may have been agreed by the terms of the consolidation; and a copy of the said consolidation agreement and the resolutions of consolidation, and the name adopted for the new company, shall be filed with the secretary of state, and shall be conclusive evidence of such consolidation and of the corporate name of the consolidated company." * * *

SECTION 4. "Any such consolidated company shall be subject to all the liabilities, and bound by all the obligations of the company within this State, which may be thus consolidated with one in the adjacent State, as fully as if such consolidation had not taken place, and shall be subject to the same duties and obligations to the State, and be entitled to the same franchises and privileges under the laws of this State as if the consolidation had not taken place."

Under the provisions of the foregoing act the "Alexandria and Nebraska City Railroad Company" consolidated with the "Iowa Southern Railroad Company," an Iowa corporation, the stockholders in each surrendering their stock

and accepting in lieu thereof stock in a new company formed by the consolidation and duly organized under the corporate name of the "Missouri, Iowa and Nebraska Railway Company" on May 11, 1870. (See articles of consolidation, Rec., p. 96.)

Almost immediately after its organization the Missouri, Iowa and Nebraska Company, viz., on June 1, 1870, executed to the Farmers' Loan and Trust Company of New York its deed of trust in the nature of a mortgage to secure $6,000,000 of bonds of even date upon its railroad, built or to be built, its engines, cars, and other equipments, &c., "together with all and singular the right of way for said road now belonging or to belong to the party of the first part, and also the right of said party of the first part to construct and maintain along said route a railroad, as well as other rights and franchises belonging to said party of the first part in, upon, or pertaining to said railroad, including its road-bed, made or to be made, gradings, embankments, * * * &c., together with all and singular its alienable franchises, emoluments, income, and advantages, tenements and hereditaments and appurtenances and all and singular the equipments or furniture, motive power, * * * together with all and singular the rights, privileges, corporate property, and franchises of said railway company and each and every part and parcel thereof, and all the appurtenances to the above-described premises belonging or in anywise appertaining." (Rec., p. 102.)

On January 6, 1879, a second mortgage between same parties was executed by way of further assurance, covering property acquired since execution of the first, but made to secure the same debt. (Rec., p. 112.)

In 1879, the railway company having defaulted in the payment of interest upon the $3,025,000 of said bonds actually issued under said mortgage, foreclosure proceedings were begun in the U. S. circuit court for the district of Iowa and proceeded to decree of foreclosure on October 22, 1880.

(See bill of complaint at p. 5 of Rec.) This decree, however, was not executed by a sale thereunder until August 19, 1886.

Pending the above foreclosure proceedings and before decree, viz., on February 12, 1880, the Missouri, Iowa and Nebraska Railway Company, as party of the first part, a committee of its bondholders as party of the second part, and the Wabash, St. Louis and Pacific Railway Company, party of the third part, entered into an agreement (Rec., p. 60) looking toward an amalgamation of said Missouri, Iowa and Nebraska road with the Wabash road, upon the terms therein provided, if the consent of the stock and bond holders of the respective companies could be had, or, if not, then that said first party should lease its railroad and equipment "in perpetuity" (Rec., p. 62) to said third party.

Failing of effectuating the consolidation with the Wabash Company, the Missouri, Iowa and Nebraska Company, in pursuance of the above agreement to lease, executed to the Wabash Company on September 3, 1880, its certain deed styled an "indenture of lease" (Rec., p. 66), whereby it did "hereby let, demise, and lease unto the party of the second part, its successors and assigns, for the term of ninety-nine years from this date, renewable in like periods forever, at the option of the party of the second part, the railroad of the party of the first part, extending," &c., "to have and to hold the said demised railway and property, real and personal, and franchises as above provided unto the said party of the second part, its successors and assigns, to and for the full end and time of ninety-nine years from and after the date of these presents and any and all renewals thereof forever, at the option of the party of the second part, as above set forth," the second party agreeing to set aside from the gross earnings of said property thirty per cent. thereof and apply same, first, "to the payment of all lawful taxes and assessments levied on said property," * * * &c.

Immediately upon the execution of the foregoing lease all

and singular the properties, real and personal, of the Missouri, Iowa and Nebraska Railway Company passed into the hands of the Wabash Company and were never again reacquired by or possessed by the Missouri, Iowa and Nebraska Company.

On March 1, 1881, the Missouri, Iowa and Nebraska Railway Company executed to the Mercantile Trust Company of New York its certain deed of trust in the nature of a mortgage (Rec., p. 121) to secure $2,269,000 of bonds executed by the Wabash, St. Louis and Pacific Railway Company, and which, under the provisions of the mortgage, were to be exchanged for the $3,025,000 bonds of the Missouri, Iowa and Nebraska Company, secured by the abovementioned mortgage of June 1, 1870, to the Farmers' Loan and Trust Company.

This mortgage of March 1, 1881, set out a copy of the Wabash Company's bonds which it secured (Rec., p. 124); which bond contained the following provision:

"This bond is one of twenty-two hundred and sixty-nine of like date, amount, and conditions, all of which are executed by said railway company for the purpose of being exchanged for certain bonds issued by the Missouri, Iowa and Nebraska Railway Company, a consolidated corporation of Iowa and Missouri, and bearing date June 1, 1870; which said bonds are secured by first mortgage or deed of trust upon the railroad property and franchises owned by said last-named company. * * * All the bonds aforesaid of the Missouri, Iowa and Nebraska Railway Company that shall be exchanged for bonds of this issue shall be properly stamped and retained by said trustee for the protection of the persons so exchanging, and no bonds of this issue shall be sold or disposed of by said trustee except in exchange as aforesaid."

Touching such exchange of bonds the mortgage contained full and explicit directions, including, among others, the following (Rec., p. 130):

"All bonds that shall be received by said trustee in the course of said exchange shall be retained by said trustee for the protection of the persons who shall hold or own the bonds hereby secured in the event of any holder or holders of the said Missouri, Iowa and Nebraska Railway Company bonds refusing to exchange and claiming priority over those who shall make such exchange, and the bonds so received in exchange shall, for the purpose of preserving the rights and security of the holders of the bonds given in exchange for them and to prevent their use for any other purpose, be endorsed as follows: 'This bond has been deposited with the Mercantile Trust Company, trustee, under provisions of a certain deed of trust or mortgage made by the Missouri, Iowa and Nebraska Railway Company, dated March 1, 1884, conveying to the said Mercantile Trust Company as trustee, the railroad of the Missouri, Iowa and Nebraska Railway Company. It is not assignable for any purpose, but is to be used only in foreclosure, if need be, in pursuance of said trust.'"

On May 28, 1884 (see allegation in bill, Rec., p. 33), under an order and decree of the United States circuit court for the eastern district of Missouri, in the case of The Wabash, St. Louis and Pacific Railway Company *vs.* Central Trust Company of New York, "all railroads owned, operated, or leased by complainant" (said Wabash Company) went into the hands of Thomas E. Tutt and Solon Humphreys, receivers appointed in said cause. By virtue of this order the entire properties of the Missouri, Iowa and Nebraska Company passed into the hands of said receivers of the Wabash Company, where it remained until the 9th day of June, 1885.

On the last above-mentioned date the United States circuit court for the eastern district of Missouri, in the above mentioned Wabash case therein pending (Rec., p. 154), appointed Thomas Thatcher receiver of the property of the Missouri, Iowa and Nebraska Company, said decree providing in respect of said receiver that "in all and singular the premises he shall be subject to such orders and directions as this court may make from time to time, and he is

authorized to apply from time to time for such other orders and directions as he may be advised." (Rec., p. 156.)

In said decree it was further ordered, adjudged, and decreed that the prayer of the petitioner therein, the Farmers' Loan and Trust Company, be granted "in this, to wit, that the petitioner have leave to enforce the decree of the United States circuit court for the district of Iowa, made on or about the twenty-second day of October, 1880, in the suit therein pending, in which The Farmers' Loan and Trust Company was complainant and The Missouri, Iowa and Nebraska Railway Company was defendant, and to execute the said decree and sell the property and premises therein referred to under and in pursuance of the provisions thereof, provided, however, that no part of the said premises affected by the said decree be sold until after the first day of June, in the year one thousand eight hundred and eighty-six." (Rec., p. 157.)

And said decretal order further provided that said Thatcher, receiver, should, whenever required by said court, enter his appearance in said cause "for the purpose of adjusting the accounts between said property and the Wabash, St. Louis and Pacific Company or its receivers or of apportioning its indebtedness aforesaid among the different divisions or lines of railroad formerely owned or operated by the Wabash, St. Louis and Pacific Railway Company." (Rec., p. 157.)

In pursuance of this decree said Thatcher, receiver, entered upon and into the possession of the railway properties of the Missouri, Iowa and Nebraska Company and so remained until same were sold under foreclosure by the master in chancery of the Iowa court, as hereinafter set out.

Upon the entry of the above-mentioned decree in the United States circuit court for the eastern district of Missouri, authorizing and directing that the Farmers' Loan and Trust Company have leave to enforce the decree of foreclosure of October 22, 1880, in the United States circuit

court in Iowa and to sell the property and premises therein referred to under and in pursuance of the provisions thereof, the said Farmers' Loan and Trust Company filed in the said proceedings in the United States circuit court for the eastern division of the southern district of Iowa sitting at Keokuk (to which said cause had in the meantime been transferred on account of the division of said district by an act of Congress), its supplemental bill, setting up, among other matters, as follows (Rec., p. 132):

The filing of its original bill in 1879 to foreclose the mortgage of June 1, 1870, securing the $3,025,000 of the Missouri, Iowa and Nebraska bonds issued thereunder; the hearing of said bill, and decree of foreclosure and order of sale of the mortgaged railway property on October 22, 1880, "which said decree still remains in full force and effect, not reversed, satisfied, or otherwise vacated" (Rec., p. 133); alleging the execution of the contract of February 12, 1880, the lease of September 3, 1880, and the mortgage of March 1, 1881, the possession and insolvency of the Wabash Company, &c., and that "the said Missouri, Iowa and Nebraska Railway Company never did cause all the holders of its bonds issued under and secured by its mortgage or deed of trust made by it to your orator June 1st, 1870, as aforesaid, to agree to surrender their bonds and take in exchange therefor the bonds of the Wabash, St. Louis and Pacific Railway Company" (Rec., p. 134); that the holder of fourteen thousand dollars of said bonds, one O. C. Du Sochet, had filed in this cause his intervening petition, claiming that the exchange of such bonds as had been exchanged had the effect of payment thereof and asserting priority over same and praying the court to carry into execution the said decree of October 22, 1880, in his favor. (Rec., p. 141.)

Said supplemental bill prayed that it might have the same relief as if the matters subsequent to said decree had

not occurred and that said former decree might be promptly and immediately executed. (Rec., p. 144.)

Thereupon the cause again proceeded upon said supplemental bill, answers, and other pleadings to final hearing and decree (Rec., p. 145) on July 8, 1886, and it was ordered, adjudged, and decreed, among other things, as follows, to wit:

"That the equities are with the complainant and that the facts and circumstances set forth in the supplemental bill of complaint herein are in substance true; that the decree of foreclosure and sale made and entered herein on the 22nd day of October, A. D. 1880, is still in full force and is not reversed, vacated, or in any manner satisfied, cancelled, or discharged.

"That on the 12th day of February, 1880, pending the foreclosure proceedings herein, the Missouri, Iowa and Nebraska Railway Company and the Wabash, St. Louis and Pacific Railway Company and the committee of the holders of the majority of the bonds of June 1st, 1870, secured by the mortgages made by the complainant made and entered into a contract in writing, a copy of which is annexed to the supplemental bill herein.

"That on the 3rd day of September, 1880, an indenture of lease was made and entered into by and between the said railway companies, copies of which are annexed to the supplemental bill of complaint herein, whereby the Missouri, Iowa and Nebraska Railway Company leased its road and property to the Wabash, St. Louis and Pacific Railway Company for ninety-nine years on certain terms and conditions.

"That the Wabash, St. Louis and Pacific Railway Company entered into possession of the road and property of the Missouri, Iowa and Nebraska Railway Company in pursuance of the terms and provisions of said lease.

"That on March 1st, 1881, an indenture of mortgage was made between the Missouri, Iowa and Nebraska Railway Company and the defendant, The Mercantile Trust Company, trustee, a copy of which is annexed to the supplemental bill of complaint herein, by which the Missouri, Iowa and Nebraska Railway Company mortgaged its road and property to the Mercantile Trust Company to secure the payment of a series of bonds of the Wabash, St. Louis

and Pacific Railway Company made under the contract of February 12th, 1880, and the lease of September 3rd, 1880, which bonds were made for the purpose of being exchanged for the existing bonds of the Missouri, Iowa and Nebraska Railway Company secured by the mortgages to the complainant herein, and which mortgage to the Mercantile Trust Company provided in substance that all the bonds received by the Mercantile Trust Company as trustee thereunder in the course of such exchange should be retained by such trustee for the protection of persons who should hold or own the bonds thereby secured in the event of any holder or holders of the Missouri, Iowa and Nebraska Railway Company bonds refusing to exchange or claiming priority over those who should make such exchange, and that the bonds so received in exchange should for the purpose of preserving the rights and security of the holders of the bonds given in exchange for them be indorsed to the effect that they were deposited with the Mercantile Trust Company, trustee, under the provisions of said mortgage and were not assignable for any purpose, but were to be used only in foreclosure, if need be, in pursuance of the trust.

(Rec., p. 147.) "That the holders and owners of three thousand and eight (3,008) of the three thousand and twenty-five (3,025) bonds outstanding and existing under the mortgage of June 1st, 1870, made to the complainant herein and mentioned in the decree of October 22nd, 1880, exchanged the same under and in pursuance of the provisions of the agreements above stated for two thousand two hundred and fifty-six (2,256) bonds of the Wabash, St. Louis and Pacific Railway Company of one thousand dollars ($1,000) each, secured by the mortgage so made to the Mercantile Trust Company as aforesaid and for seven hundred and fifty-two thousand dollars ($752,000) of the preferred stock of the Wabash, St. Louis and Pacific Railway Company; but that the holders of seventeen (17) of said bonds of June 1st, 1870, did not exchange them for such bonds of the Wabash, St. Louis and Pacific Railway Company, but still hold and own the same; that the said three thousand and eight, (3,008) bonds of June 1st, 1870, were after such exchange held by the Mercantile Trust Company as trustee for the holders of the two thousand two hundred and fifty-six (2,256) bonds of the Wabash, St. Louis and Pacific Railway Company and as

collateral security for said two thousand two hundred and fifty-six (2,256) bonds. * * *

(Rec., p. 148:) "That there is now due and unpaid upon each of the said three thousand and twenty-five (3,025) Missouri, Iowa and Nebraska Railway Company's bonds of June 1st, 1870, the sum of two thousand two hundred and sixty-six dollars and seventeen cents ($2,266.17), with interest from the date of the decree on the principal sums at the rate of seven per centum per annum, payable annually, and on the interest at the rate of 6 per centum per annum, and upon the said seventeen (17) Missouri, Iowa and Nebraska Railway Company's bonds in the aggregate the sum of thirty-eight thousand five hundred and twenty-four dollars and ninety cents ($38,524.90).

"That all the costs and expenses of this suit, the allowances for compensation, disbursements, and expenses of the complainant, and the allowances to counsel, so far as the same were ordered to be paid in the former decree herein of October 22, A. D. 1880, have been paid.

"That the defendant The Missouri, Iowa and Nebraska Railway Company has wholly failed and neglected to pay the amount due on the bonds and mortgages mentioned in the said decree, as required therein, and still continues to so neglect and refuse, and has made default therein.

"That the holders of the said seventeen (17) bonds and coupons thereto annexed are entitled to have the said decree of October 22, A. D. 1880, enforced for their benefit, as to the amount due on their bonds, to the same extent that the holders of the other three thousand and eight (3,008) bonds of June 1st, 1870, are entitled to have the same enforced, and that they have no priority over the holders of the said three thousand and eight (3,008) bonds, but that the decree must be executed for the benefit of all the parties interested in the said three thousand and twenty-five (3,025) bonds equally and *pro rata* as against each other.

(Rec., p. 149:) "Wherefore the court doth further order, adjudge, and decree that the said defendant, The Missouri, Iowa and Nebraska Railway Company, do, within five (5) days and after the date of this decree, pay the amounts due on the bonds and coupons aforesaid, together with the costs and expenses of this suit, to be taxed; that in default whereof the mortgaged premises described in the said decree of October 22, A. D. 1880, be sold at public auction, at the

front door of the building in which the United States courts are held in the city of Keokuk, in the State of Iowa, by P. T. Lomax, Esq., a master of this court, and that the compensation of such master shall hereafter be fixed by the court. The said master is hereby directed to give notice of the time and place of such sale, &c. * * *

"That at and upon the making of said sale the said master shall make and execute a proper and suitable deed or deeds or instruments of conveyance of the mortgaged premises and property to the purchaser or purchasers at the said sale, and that he also forthwith report to this court," &c. * * *

Afterwards, on August 20, 1886, P. T. Lomax, said master in chancery, filed in said court his report of sale, showing that all of said properties had been sold on August 19 "in pursuance of decretal orders of this honorable court made in the above cause and dated respectively October 22, 1880, and July 8, 1886," to Morris K. Jessup and Henry C. Thatcher for $600,000. (Rec., p. 152.)

As appears by the allegations of the bill in case 183 (Rec., p. 5), the above-mentioned sale was duly confirmed by the court September 21, 1886 (for copy of confirmation see Rec. case 414, p. 217), and that thereafter the property was by said master duly conveyed to them (copy of deed, Rec. case 414, p. 218), and that said Jessup and Thatcher conveyed same to the complainant herein, The Keokuk and Western Railroad Company, going into possession thereof on December 3, 1886. (Rec. case 414, p. 222.)

It is to be noted that this deed recites upon its face that, the title of grantors is derived by sale under the mortgages of 1870 and 1879.

On August 6, 1879, Charles A. Secor and four others of the holders of the stock of the Missouri, Iowa and Nebraska Railway Company filed their bill (Rec., p. 159) in the United States circuit court for the eastern district of Missouri against the said company and the officers of the several counties, including Clark and Scotland counties, alleg-

ing a succession to the immunity from taxation granted by the legislature to the Alexandria and Bloomfield Railway Company, and praying that the several county officers be enjoined from levying or collecting any taxes against said railroad for the year 1879 or prior years.

On January 7, 1880, the complainants therein filed an amended bill, in which the State auditor of Missouri was also made party defendant (Rec. p. 174), charging, among other things (Rec., p. 177), that the State auditor and the county officers had caused the property of the complainant to be assessed for taxation, &c., and (Rec., p. 178)—

"That the said county court justices in their said several and respective counties have ordered suit to be brought for said supposed delinquent taxes heretofore assessed upon the property of said railway company, and have contracted and intend to contract with attorneys-at-law to institute and maintain suits for such delinquent taxes and for such taxes as have heretofore been assessed and are not delinquent, unless said railway company submits to the wrongful oppression of paying the same, and that said defendants have combined and agreed in every way to proceed to enforce the collection of taxes against the property of said railway company as the said defendants would be entitled to do under the laws of Missouri were said taxes legally assessed and said railway company not exempt therefrom by law."

The prayer for relief, among other things, is (Rec., p. 179):

"To declare by a decree of this court the action of the board of equalization in assessing the property of the said Missouri, Iowa and Nebraska Railway Company illegal, to declare the acts of the said auditor and the officers of said counties to be void and of no effect in law or in equity, and that the taxes charged and levied against said company and property on said assessment to be illegal and void, whether for State, county, school, or municipal, or any other purpose, and that your honors may grant to your orators a writ of injunction issuing out of and under the seal of this honorable court, to be directed to the defendants hereinafter mentioned, to restrain them and each of them and all

others acting for or under them, as well as all persons claiming any right under said assessment, from instituting any suits or in any other manner proceeding to collect said taxes or any part thereof, and restraining said railroad from paying said taxes or any part thereof," &c.

On December 7, 1881, the defendants in said cause, except Thomas Holliday, state auditor, as to whom the bill was dismissed (see Rec., case 414, p. 31), and the railway company, filed their joint answer to said bill of complaint. (Rec., p. 182; Rec., case 414, p. 32.)

On December 13, 1881, the complainants, without replying to the foregoing answer of the defendant county officers, took leave to file and filed an amendment to their amended bill (Rec., p. 186; Rec., case 414, p. 36), and thereupon, on March 13, 1882 (Rec., p. 190), leave was given defendants to plead to the said bill as amended on or before the May rules, 1882. (Rec., case 414, p. 39.)

The defendant having failed to plead to said amendments, on May 10, 1882, said bill as amended was taken *pro confesso* and final decree entered against all the defendants except the state auditor, as to whom the bill had been previously dismissed by complainants. (Rec., p. 190; Rec., case 414, p. 40.)

This decree, *inter alia*, is as follows (Rec., p. 191; Rec., case 414, p. 40):

"It is further ordered and decreed that the said defendants, the said several Counties of Clark, Scotland, Schuyler, in the State of Missouri; the said several courts of said counties respectively, and the said several named judges of said several and respective county courts, and the said several and respective collectors of said several and respective counties, by themselves, their officers or agents, or their said several and respective successors in office, be, and they are hereby, perpetually enjoined and restrained from levying or attempting to levy, collecting or in any manner attempting to collect, from or of the said Missouri, Iowa and Nebraska Railway Company any taxes whatever, State, county, school,

or municipal, of whatever kind or character, until the expiration of the exemption limited in the charter of said railway company, to wit, December 1, 1892, and that the said Missouri, Iowa and Nebraska Railway Company, by its officers, agents, or employés, be and are also perpetually enjoined from paying any such taxes as have or that may be levied for years prior to the said 1st of December, 1892, and that a writ of perpetual injunction issue in accordance with this decree."

On February 25, 1890, the appellant filed its bill of revivor, seeking to revive and put in full force and effect in its favor the above-mentioned decree, basing its claim upon its deed from Jessup and Thacher, who bought under the said foreclosure proceedings of the mortgage of 1870 and 1879, and which deed recited said mortgage and foreclosure thereof. (Rec., case 414, p. 77.)

Demurrer to this bill having been sustained (Rec., case 414, p. 105, as per opinion by Thayer, J., page 249) leave was granted appellant to file second amended bill of revivor (Rec., p. 106). In this amended bill (Rec., p. 106) appellant makes an effort to assert that its title was derived under foreclosure proceedings, not of the above-mentioned mortgages, but of the mortgage of March 1, 1881, but relies upon same decree of circuit court at Keokuk, July 8, 1886.

Issues were made on this bill, and a trial thereof resulted in a decree dismissing same (Rec., p. 214; opinion by Thayer, J., p. 254). It is to reverse this decree that complaint has appealed in case No. 414.

It is further to be noted by the Court that the deeds from the Missouri, Iowa and Nebraska Railway Company and from the Mercantile Trust Company to Jessup & Thacher and from Jessup & Thacher to appellant in 1890, and to which appellant endeavored to attach some importance in the court below in case 414, were executed after the demurrer to the bill of revivor had been sustained and

evidently for the sole purpose of strengthening the position, then for the first time assumed, that complainant was claiming by a title other than that derived under foreclosure of the mortgage of 1870. (Rec., case 414, pp. 105, 229, 233, 237.)

Appellee's Brief and Abstract of Argument.

I.

The tax immunity granted to the Alexandria and Bloomfield Railway Company was personal to that corporation, and wholly ceased and determined on May 11, 1870, when its stock was canceled and it went out of existence. Such immunity did not inure to the benefit of the new corporation, the Missouri, Iowa and Nebraska Railway Company, organized under general laws then in force.

1st. In the first place, the proposition was the conclusion reached both by the supreme court of Missouri in the case No. 182, now before this Court on writ of error, and also by the Federal circuit court in case No. 183, now at bar.

State *ex rel.* Wine *vs.* Keokuk and Western Railway Company, 99 Mo., 30.

Keokuk and Western Ry Co. *vs.* County Court Scotland County *et al.*, 41 Fed. Rep., 305.

Opinion in last case found in Record, case 183, p. 193.

The decision of these separate courts, reached in entirely independent proceedings and supported, as each of them is, by an able opinion, entitles them, we submit, to great weight as persuasive authorities before this Court.

2d. But that the proposition is supported both by reason

and authority a reference to the following cases determined in this Court will abundantly show:

Morgan *vs.* Louisiana, 93 U. S., 217.

Wilson *vs.* Gaines, 103 U. S., 417.

Railroad Companies *vs.* Gaines, 97 U. S., 697.

Louisville & Nashville R. R. Co. *vs.* Palmes, 109 U. S., 244.

Railroad Company *vs.* Maine, 96 U. S., 499.

Chesapeake & Ohio R. R. Co. *vs.* Miller, 114 U. S., 176.

Memphis & Little Rock R. R. Co. *vs.* Commissioners, 112 U. S., 609.

Shields *vs.* Ohio, 95 U. S., 319.

Railroad Co. *vs.* Georgia, 98 U. S., 359.

St. Louis, Iron Mountain & Southern Railway Co. *vs.* Berry, 113 U. S., 465.

In each of the last three cases, cited the corporation enjoying the immunity consolidated its stock with another. It was held that the result of such consolidation was the formation of a new company, subject to the constitution and laws then in force.

In Shields *vs.* Ohio, 95 U. S., 319, *sup.*, the privilege was the right to make reasonable charges for conveying passengers. The company to whom it was granted consolidated with another, under a law passed prior to the constitution of 1851, but the consolidation was not effected until after the constitution went into effect. This constitution forbade the passing of special acts conferring corporate powers, and also forbade special privileges which might not be altered, revoked, or repealed by the legislature.

In the case of Louisville and Nashville Railroad *vs.* Palmes, 109 U. S., 244, the Shields case, *sup.*, was cited with approval in this language (page 254):

"And in Shields *vs.* Ohio, 95 U. S., 319, it was decided that in cases of corporations created by consolidation the

powers of the new company did not pass to it by transmission from its constituents, but resulted from a new legislative grant that could not transcend the constitutional authority existing at the time it took effect."

In the case of Railroad *vs.* Berry, 113 U. S., 465, *sup.*, the immunity from taxation was granted by special act of the Arkansas legislature incorporating the company, and by the very same act it was authorized to consolidate or make joint stock with any other railroad company. After the passage of this act a new constitution took effect in the State. This instrument forbade special acts conferring corporate powers; authorized the formation of corporations under general laws, and provided that the property of all corporations should be subject to taxation the same as individual property. Held, that although the consolidation was effected under authority of the act of incorporation, yet such consolidation created a new company which dated its existence subsequent to the constitution, and that therefore the tax immunity could not and did not pass to it.

II.

The decree in the case of Secor *vs.* Singleton of May 10, 1882, enjoining the levying or collection of taxes against the Missouri, Iowa and Nebraska Railroad Company, cannot be invoked by the appellant herein as an estoppel by judgment against the appellees.

1st. An inspection of the record in the Secor-Singleton case will, it is believed, show that the only taxation in the mind of the pleader in framing his bill with its amendments and prayers were taxes for years anterior to the filing of the bill, 1879; whereas the decree, as we think through inadvertence, enjoined all taxes, past and future, down to the year 1892.

We respectfully maintain that, even if it be held that the

appellee is entitled to the benefit of this decree, it should be limited by construction to the very matters contemplated in the bill and prayer for relief.

A complainant in equity can recover only on the case made by his bill and is entitled to no relief on equities brought into the case by subsequent pleadings or by evidence.

Converse *vs.* Blumrich *et al.*, 14 Mich., 109.

"Every decree in a suit in equity must be considered in connection with the pleadings, and, if its language is broader than is required, it will be limited by construction so that its effect shall be such, and such only, as is needed for the purposes of the case that has been made and the issues that have been decided."

Waite, C. J., in Barnes *vs.* Railway, 122 U. S., 1, at page 14.

In Graham *vs.* R. R., 3 Wal., 704, Chase, C. J., in limiting a decree of injunction to the issue made in the pleadings, says (p. 710):

"The decree was evidently intended to determine that issue. It was evidently not intended to determine the question whether the making of the agreement was beyond the corporate powers of the La Crosse Company, for there are no terms which affirm its inherent invalidity without regard to intent. It is our duty to construe the decree with reference to the issue it was meant to decide. Its words are very broad and emphatic, but we cannot say that they were intended by the district court to have any greater effect than to avoid and set aside, as against Cleveland, the agreement and the judgment impeached by his bill. We think, on the contrary, that a decree having such an effect could not have been properly rendered upon the pleadings and issue in that cause. * * * We cannot ascribe to any court an intention by a decree on such pleadings to annul such an arrangement as between the parties to it, nor could we approve such action even were the intent clear beyond question."

A decree which is entirely aside from the matter in controversy as presented by the pleadings will be treated as a nullity even in a collateral proceeding.

Reynolds *vs.* Stockton, 43 N. J. Eq., 211.
Munday *vs.* Val, 34 N. J. Law, 418.

In a case decided by Brewer, J., the supreme court of Kansas furnishes an apt illustration of the doctrine here contended for. This was a tax case where an injunction for future taxes had been granted on pleadings and prayer for relief against taxes for a single year. It was held that that part of the decree which enjoined taxes for future years was void.

Beach *vs.* Shoenmaker, 18 Kan., 147.

2d. But the appellant, if it ever possessed the right it now claims to invoke the decree of injunction in the Secor-Singleton case as a direct estoppel against appellees, has lost it by its own conduct, viz., in bringing this bill in case 183.

The bringing of this bill was not only an admission on the part of the appellant that the Secor decree was not effective in its favor, but by so doing it opened the question as to the succession of the tax immunity to the Missouri, Iowa and Nebraska Railroad Co. and made such question an original one, which it asserts and submits *de novo* for adjudication.

Bigelow on Estoppel, 5th ed., p. 103.
Weed *vs.* Burt, 78 N. Y., 191.

3d. But waiving the foregoing, we confidently maintain that there is an entire absence of that privity of estate in the appellee so indispensably necessary to an effective estoppel by judgment.

The complainant derives its title by purchase from the purchasers under foreclosure of a mortgage executed more

than nine years prior to the filing of the bill in the Secor case. Neither the trustee in the mortgage, the Farmers' Loan and Trust Company, nor any of the holders of the bonds secured by the mortgage were made parties in the Secor suit.

A mortgagee is an essential party to any proceeding affecting his rights to the mortgaged premises.

1st Jones on Mortgages, 3d ed., sec. 709.

It follows that mortgagees are not affected by judgments against mortgagors in suits by third parties begun subsequent to the execution of the mortgage unless made parties to the litigation.

The mortgagee, not having been made a party to the suit, was therefore not bound nor in any manner affected by the decree therein, and those claiming in right of the mortgage are of course equally unaffected.

Chester *vs.* Bakersfield, T. H. Assn., 64 Cal., p. 42.
Coles *et al. vs.* Allen *et al.*, 64 Ala., 98.
Campbell *vs.* Hall. 16 N. Y., 575.

A privity antedating the action does not work an estoppel.

Bryan *vs.* Malloy, 90 N. C., 508, at p. 511 *et seq.*

"While a mortgagee is in privity with a mortgagor as to all that happened before the execution of the mortgage, he is not in privity with respect to anything happening afterwards."

1 Freeman on Judgments, 4th ed., § 162, p. 299.
Hunt *vs.* Haven, 52 N. H., 162.

To make a man a privy to an action he must have acquired an interest in the subject-matter subsequently to the action.

Bigelow, Estoppel, 5th ed'n, pp. 142 and 143, and cases cited.

So, in the case of a mortgagee privity in estate with mortgagor exists only in respect of the estate as it existed when the mortgage was executed.

Mathes vs. Cover, 45 Ia., 512.

If mortgagee and those claiming in right of the mortgagee were unaffected by the decree they, of course, cannot take advantage of same by way of estoppel.

"The operations of estoppel must be mutual. Both the litigants must be alike concluded or the proceedings cannot be set up as conclusive upon either."

Freeman on Judgments, sec. 159.

"What is meant by estoppels being mutual is that the particular judgment is binding upon both if obligatory on either."

Herman on Estoppel, p. 216.

III.

If, however, it be held that the Missouri, Iowa and Nebraska Railroad Company fully succeeded to all the immunity from taxation granted to the Alexandria and Bloomfield Railroad Company, or if it be held that appellant stands in such a relation of privity with the Missouri, Iowa and Nebraska Company as entitles it to invoke the decree of exemption entered in the Secor case as an estoppel on appellees to deny the immunity, then in either case we respectfully contend that such immunity in favor of the Missouri, Iowa and Nebraska Company wholly ceased and determined on September 3, 1880. On this date that corporation leased and turned over to the Wabash Railway Company the whole of the exempted property "for a period of ninety-nine years, renewable forever at the option of said Wabash Company." The record shows that the Missouri, Iowa and Nebraska Company, the only corporation in whose favor the decree of immunity in the Secor case was entered, never after the execution of this lease reacquired the property.

1st. We respectfully maintain that such a lease, in so far as it relates to the alleged tax immunity in lessor, was as effectual a disposal of and parting with the exempted property as an absolute sale would have been. As touching the tax immunity, such lease was tantamount to a sale, for it unconditionally, and irrevocably disposed of the property for a period more than coextensive with the immunity.

Admitting that the property while owned by the Missouri, Iowa and Nebraska Company was not subject to taxation either by reason of the succession or the decree, still such exemption imposed upon that company the correlative duty of personally continuing in the ownership thereof, at least to the extent of enabling it to operate the road itself as a public carrier. The State at most had accepted the latter obligation in lieu of the ordinary right of taxation. It had the undoubted right to insist on the personal fulfillment of such obligation.

But by means of the lease the Missouri, Iowa and Nebraska Company had parted with and put beyond recall its power to keep and perform this obligation. Its occupation was gone. It could not even have been held responsible for the misconduct or malperformance of duty on the part of the lessee.

Wood on Railroads, p. 1392.
Ib., pp. 1399 and 1687.

As sufficiently shown by the authorities cited in the first section of this brief, tax immunities are personal and non-transferable.

Wilson *vs.* Gaines, 103 U. S., 417.
Louisville, &c., R. R. *vs.* Palmes, 109 U. S., 244.
Morgan *vs.* Louisiana, 93 U. S., 217.
Railroad *vs.* Commissioners, 103 U. S., 1.
Chesapeake & Ohio R. R. *vs.* Miller, 114 U. S., 176.
Memphis, &c., R. R. *vs.* Commissioners, 112 U. S., 609.

Under the lease the Wabash Co., and not the Missouri, Iowa and Nebraska Co., was the owner of the property for all the purposes of taxation.

The trustees of the village of Elmira leased certain premises of which it was the owner (and which was, of course, exempt from taxation for village purposes) for a period of 999 years for the consideration of $400 cash down and an annual rental of one peppercorn if demanded. The defendant acquired the interest of the lessee and was in possession of the property which had been assessed to him for taxation by the village for village purposes: *Held*, that the defendant was the owner for the purposes of taxation and therefore liable.

Village of Elmira *vs.* Dunn, 22 Barb., 402.

2d. But even if this was not the effect of instruments of the character of this lease under the general rules of law, we contend that it was the necessary result of the particular lease in this case under the constitution and laws of Missouri in force at the time it was executed.

The lessor could execute the lease, the lessee could accept the lease, only as they were authorized by the then existing laws (3d Wood on Railroads, p. 1688, § 489). The lease must, therefore, be construed as imposing upon and carrying with it all the conditions and burdens laid upon the parties to it by the laws of the State by authority of which it was entered into.

Section 5 of article X of the constitution of 1875 provides as follows:

"All railroad corporations of this State or doing business therein shall be subject to taxation for State, county, school, municipal, and other purposes on the real and personal property *owned or used* by them." * * *

Section 6805 of the Rev. Stats., 1879, provides as follows:

"All railroads * * * in this State, and all other property real personal or mixed *owned hired or leased* by

any railroad company or corporation in this State shall be subject to taxation for State, county or other municipal purposes." * * *

The first steps toward listing of railroad property for taxation will be found in section 6866, same statutes, and provides that—

"On or before the first day of January in each and every year the president or other chief officer of every railroad company * * * shall furnish to the State auditor a statement * * * setting out in detail the total length of their road so far as completed *including branch or leased roads* the entire length in this State." * * *

Conceding that the Missouri, Iowa and Nebraska Railroad Company succeeded to the charter-tax immunity claimed, and for argument that the above-quoted provisions were violative of same regarded as a contract, so long as it was in a position as owner of and operating the property, still it is sufficient to say that the property had ceased to be owned and used by it, and that by a title superior to its own for the time being was both owned and used by another corporation which was an entire stranger to the immunity.

It was perfectly competent for the State to say to the Missouri, Iowa and Nebraska Company:

"You may lease this property if you will under the constitution and laws now in existence, but if you do and whenever the property becomes *a branch or leased* road *hired or leased* by any other corporation, such corporation shall be liable to be taxed for same notwithstanding it may have been exempt so long as owned and used by yourself."

Under the above-quoted constitutional and statutory provisions the Wabash Railway Company from and after September 3, 1880, was the corporation and the only corporation upon which rested the primary personal obligation to pay the tax on this railroad. The same authority which justified the leasing imposed the condition, and this condi-

tion was expressly recognized by both companies in the lease itself by a provision contained therein which obligated the lessee "to the payment of all lawful taxes and assessments levied on said property." (See Record case 183, p. 67.)

In an Illinois case the legislative charter of the Chicago and Alton Railroad Company authorized it "to acquire by lease, purchase, or otherwise any extension of its road necessary and proper to its business," and provided further that "all property so acquired shall become part of the property of said corporation and subject to the provisions of the act." The company leased three different roads forever. In each lease it covenanted to keep the road in good repair and make necessary additions to secure prompt and efficient dispatch of business; that the leased premises should be forever used and operated as a part of the main line of the Chicago and Alton railroad, and that it would at all times thereafter pay all taxes assessed against the demised premises. The revenue law required railroad property to be taxed in each county, town, village, &c., in proportion that the main track used or operated in such county, town, or village bears to the whole length of the road used or operated by such person, company, or corporation, whether owned or leased by him or by them or otherwise in whole or in part. The court say (on p. 354):

"We think it very clear from the corporate powers conferred by its charter, the terms of the leases, and the provisions of the revenue law referred to that the Chicago and Alton Company is, for all purposes of taxation at least, if not for all purposes, to be regarded as the owner of all the leased property."

Huck *vs.* R. R. Co., 86 Ill., 352.

So also in another case the same court held that for the purposes of taxation, sleeping cars used by a railroad company were to be regarded as belonging to it, although the

running arrangement is such as to require employés of the car company to accompany the cars and wait upon the passengers. It is a part of the rolling stock of the railroad company. *It is used by it.* The railroad company has a qualified property in the sleeping cars.

Kennedy *vs.* R. R. Co., 62 Ill., 395.

Denver, &c., R. R. Co. *vs.* Church, 28 Pac. Rep., 468.

In a case in the Federal court the legislature of the State of Missouri, by act of March 24, 1870, provided, among other things—

"That if a railroad company of another State shall lease a railroad the whole or a part of which is in this State * * * such part of such railroad as is within this State shall be subject to taxation, and shall be subject to all the regulations and provisions of law governing railroads in this State."

Dillon, J., held that the Burlington and Southwestern Railway Company (an Iowa corporation), having acquired its right to lease a railroad in Missouri under and by virtue of the provisions of this act, must take such right *cum onere*; that a corporation of another State which leases or makes arrangements for operating a road in this State must pay the taxes on such road, *even if it was exempt from taxation in the hands of the lessor.*

R. R. Co. *vs.* Putnam, Sullivan, and Lynn Counties 3 Dillon, 289.

See also Railroad Co. *vs.* Guffey, 122 U. S., 561.

This statute received a similar construction by the supreme court of the State in an analogous case.

State *ex Rel. vs.* C. B. & K. C. R. R., 89 Mo., 523.

It may be conceded that the Wabash Railway Company, having been incorporated under the laws of Illinois, Indiana, and Missouri, is so far a domestic corporation that a lease made to it would not fall under the provisions of the

above act. Yet, as shown above the general statutes then in force imposed upon domestic corporations the burden of paying taxes upon their leased lines as clearly and emphatically as this act imposed it upon corporations of other states.

This burden so laid upon a lessee company is secured by an express statutory lien. Section 6886, Revised Statutes 1879, provides as follows:

"Sec. 6886. *Lien for Taxes.* — All property owned or held by any railroad company in this state, shall be liable for the taxes assessed and levied against such company in each county, and all state, county, city, town, village, school and other municipal taxes levied on the property of any railroad company in each county, together with all fines, penalties and costs accruing thereon, are hereby declared to be a prior lien in favor of the state on all the property of such company, real, personal and mixed, including road-bed and rolling stock, lands, depots and other buildings in such county; and the fact that taxes assessed against any specific property of such company shall have been paid, shall not exempt such property from being subjected to the payment of any and all other taxes due by such company, and the same are hereby declared to be a prior lien upon all such property, real and personal, which lien shall have precedence of all other liens, judgments and decrees of whatever kind and shall be enforced as hereinafter provided."

It is to be contended by appellants' counsel that the principle maintained in the foregoing will, if supported, only fasten liability for the taxes during the period of the actual holding by the Wabash Company, namely, from September 3, 1880, the date of the lease, to May 25, 1884, the time of the appointment of Tutt & Umphreys, receivers, and that the principle contended for would have no application during the holding by Tutt & Umphreys, the general receivers of the Wabash, from May, 1884, up to June, 1887, nor during the holding of Theodore, special receiver of this leased line of the Wabash Company, from the last-

named date down to the confirmation of the sale of the road and the going into possession by complainant in December, 1886.

To this suggestion we respectfully reply that the tax exemption, conceding it to belong to the Missouri, Iowa and Nebraska Railroad Company, could not possibly protect the property in the hands of any other person or corporation. The receivers during their respective holdings fall as broadly within the provisions of the statutes fastening liability for taxes upon those owning or using railroad property as did the Wabash itself. The possession of the receivers was in no sense the possession of the Missouri, Iowa and Nebraska Railroad Company, and even if they had been appointed in proceeding against that company alone, which is not the fact, such appointment would have resulted in depriving the Missouri, Iowa and Nebraska Railroad Company of possession for administration and protection for the benefit of the mortgagee until a sale under foreclosure proceedings.

A receiver's possession is analagous to that of a mortgagee in possession. During his holding the corporation is in no-wise liable for torts committed by the receiver in the management of the affairs of the corporation.

Pierce on Railroads, page 285.
Ibidem, page 411.
Wood on Railroads, p. 1389.
High on Receivers, sec. 385 *et seq.*
Ib., 386 *et seq.*

We therefore submit if the immunity from tax existed in favor of the Missouri, Iowa and Nebraska Company, or if we are estopped by the decree to deny that it existed, that it was when viewed in the light of subsequent events an immunity from an obligation for which that corporation has been in nowise found since September 3, 1886. Since that date the liability for taxes has been laid by law upon

others, and the personal exemption of that corporation will not discharge the personal obligation of those others.

4th. But it may be contended by the appellant that the decree of immunity in the Secor-Singleton case, if not working an absolute estoppel, yet when taken in connection with the case of Scotland County vs. Missouri, Iowa and Nebraska Railway Company, 65 Mo. Rep., 123, a rule of property was established, on the faith of which the appellant has acted, and should not, therefore, be disturbed to its prejudice.

To this suggestion we respectfully submit, first, that it is not supported by authority.

Louisville & Nashville R. R. vs. Palmes, 109 U. S., 244, at p. 255.

Second. That the doctrine is wholly inapplicable to cases of this sort. The result of applying the rule of property doctrine to such cases would be that a State could be deprived of its revenue by the mere adjudication of a case in one of its courts, although such adjudication turns out to have been palpably erroneous.

Third. A reference to the case in 65 Mo. will disclose that the question of whether or not the tax immunity passed to the Missouri, Iowa, and Nebraska Company was not a controverted question before the court. The case was submitted on an agreed statement of facts and, as expressly said by the learned judge in the opinion at page 134—

"That the present defendant succeeded to all the privileges and liabilities of the Alexandria and Bloomfield Company is conceded."

This is further clearly shown by both Thayer, judge, in deciding case at bar, No. 183 (see opinion on this point, Rec., p. 198), and the supreme court of the State in case No. 182, reported in 99 Mo., 32.

Touching the suggestion that an injunction against the collection of taxes for a given year operates as an estoppel and becomes *res judicata* as to taxes for later years, we respectfully cite a well-considered case in the supreme court of Iowa.

City of Davenport *vs.* C., R. I. & P. R. R., 38 Ia., 633.

This was an action to recover taxes for years 1867, '68, '69, '70, and 71. Defendants pleaded by way of estoppel that in February, 1867, the district court of Scott county, in an action brought by the M. & M. Railroad Company *vs.* The City of Davenport, enjoined the collection of taxes on the same property for the years 1863, '64, and '65, and that defendant herein had become the owner of said property by purchase at a foreclosure sale under mortgage thereon existing in 1866, in which year the sale took place. Miller, C. J., in affirming the judgment of the lower court, which sustained a demurrer to above plea (p. 639), says:

"The demurrer raises the question whether that judgment works an estoppel of plaintiff to collect the taxes sued for in this action. We are of the opinion that it does not. While this action may be conceded to be between parties and privies to the former decree (a question, by the way, which was not discussed or determined), yet we think it is clear that the subject-matter of the two actions is not the same. The taxes enjoined in the former suit were those for 1863, 1864, and 1865. This action is to recover for subsequent taxes. Each year's tax constitutes a distinct and separate cause of action, and the determination of the matters involved in the injunction suit reached no further than the taxes of the years then in question. The cases are unlike those where two causes of action (as two promissory notes) forming the subject-matter of successive actions between the same parties, both growing out of the same transaction, in which a defense is set up in the first suit and held good, will conclude the parties in the second.

"So a judgment of a competent court upon the validity of coupons attached to a bond is conclusive in another action between the same parties upon other coupons at-

tached to the same bond (Bochard *vs.* Dias, 3 Denio, 283; Whittaker *vs.* Johnson County, 12 Ia., 595).

"But the taxes of separate years do not in any just sense grow out of the same transaction. They are like distinct claims on two different promissory notes made upon two distinct and separate, though similar, transactions between the same parties. A judgment on one of such notes, it is quite clear, would not be of any force as an estoppel in an action on the other note between the same parties."

We respectfully submit that the decrees in both cases should be affirmed.

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Office Supreme Court U. S.
FILED.
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893

THE KEOKUK AND WESTERN RAILROAD COMPANY, *Appellant*,
vs.
SCOTLAND COUNTY *et al.*, *Appellees*. } No. 183.

THE KEOKUK AND WESTERN RAILROAD COMPANY, *Appellant*,
vs.
THE COUNTY COURT OF SCOTLAND COUNTY *et al.*, *Appellees*. } No. 414.

Supplemental Brief by Appellees Clarke County and its Officers.

Since the preparation of our brief in these cases we have had the first opportunity to examine those filed by appellant.

Against two or three positions taken by appellant we beg indulgence to submit these few supplemental lines.

I.

Touching the asserted succession of the Missouri, Iowa and Nebraska Railway Company to the tax immunity of the Alexandria and Bloomfield Company, appellant submits a learned argument in answer to the numerous con-

trolling authorities cited by us against the supposed succession.

Their argument is briefly this: That the constitution of 1865 provided that all statute laws not inconsistent with this constitution should remain in full force and might be amended; that the act of 1869, authorizing consolidation, was a mere amendment of the charter of 1857, and therefore the company organized under it succeeded to the unrepealed immunity granted by the charter of 1857.

In support of this proposition they cite the case of Scotland County *vs.* Thomas, 94 U. S., 682, and a large number of other cases.

We think the vice of the argument lies, first, in omitting to note that an immunity from taxation is never upheld by mere construction; it must be clear, manifest, and distinct. Second. The act of 1869, if it be construed as an amendment of the act of 1857, so as to carry forward the tax immunity, was wholly inconsistent with article 11, section 16, which required all property to be taxed.

It is to be carefully noted that the constitution of 1865 contains two provisions relating to the exemption of property from taxation, viz., art. 4, sec. 27: "The General Assembly shall not pass special laws * * * * exempting any property of any named person or corporation from taxation," and art. 11, sec. 16: "No property, real or personal, shall be exempt from taxation." * * * * The first is a legislative inhibition and is similar to the restraint against the enactment of laws authorizing counties to become stockholders in corporations without the assent of two-thirds of the voters expressed at an election (art. 11, sec. 14), under which the Thomas case was decided, whereas the other is a direct and positive declaration that no property shall be exempt by any means whatever—that is, that all property shall bear its just proportion of the burdens of taxation. This latter provision, though quoted in their

statement, is wholly ignored in the argument of the learned counsel for appellant.

In many of the cases cited on this contention by appellant no constitutional restraint whatever was involved; in the others (as the Thomas case, *supra*, and the case of Tennessee *vs.* Whitworth, 117 U. S., 149) the provision under inquiry will be found to be radically different from art. 11, section 16, of the Missouri constitution, here involved.

In the Whitworth case the constitution of Tennessee, under discussion, was as follows:

"*The legislature shall have no power* to pass any law granting to any individual or individuals rights, privileges, immunities, or exemptions other than such as may be by the same law extended to any member of the community who may be able to bring himself within the provisions of such law: *Provided always*, That the legislature shall have power *to grant such charters of corporations as they may deem expedient for the public good.*"

There is a broad difference in all these cases, where the question was chiefly one of legislative intent, and the case at bar, where the question is one of legislative power.

II.

Counsel for appellant argue that as the statutes of Missouri touching the assessment and collection of taxes on railroads require only that the assessment be made against the corporation owning the road and the form laid down in the statute for suits to recover taxes does not seem to contemplate other parties to the suit, that therefore the title on sale would be good without joining mortgagees; the argument being that the owner represents all parties in interest as to taxes, and therefore a proceeding to enjoin by him would bind all others.

To this we reply that the statutes of the State concerning the assessment and collection of individual taxes expressly

requires that only the owner shall be made party to suit for recovery of taxes; and yet, notwithstanding such positive statutes, the Supreme Court has repeatedly held that persons not made parties to the suit are in nowise bound or affected by the proceedings.

Stafford vs. Fizer, 82 Mo. 393.
Cowell vs. Gray, 85 Mo. 169.
Allen vs. McCabe 103 Mo. 138.

That even the inchoate dower of the owner's wife would not be divested unless she were made a party defendant.

Bevens vs. Smith, 101 Mo. 583.

But we submit that the conclusions of appellant do not follow his premises, even if true.

Conceding for argument that the mortgagee is an unnecessary party to a tax suit and that his estate would pass by sale under a judgment for taxes, it by no means follows that therefore a mortgagor could bind his mortgagee as a party to a decree in a suit brought by the mortgagor after execution of the mortgage and to which the mortgagee was not made a party, even if the suit were to test the validity of the tax exemption.

III.

In our third proposition, viz., that [redacted] by the general rules of law, but more especially under the statutes of Missouri, we maintain that the Wabash Railway Company was primarily the only corporation against which the taxes could be assessed after September 3, 1880, the date of the lease, and that the property would not be protected from taxation by an immunity in favor of the Missouri, Iowa and Nebraska Railroad Company, conceding, for argument, that such immunity existed in favor of the latter company.

On page 22 of brief, in case 414, appellant asserts that

our contentions on this ground are directly in face of the decisions of the Missouri supreme court in State *ex Rel.* Glenn *vs.* The Mississippi Bridge Company, 109 Mo., 252."

An examination of that case will disclose that the decision is based wholly upon section 7755 of Revised Statutes, which is as follows:

"All bridges * * * over streams dividing this State from other States owned by joint stock companies, and all such bridges where a toll is charged for crossing the same * * * shall be subject for taxation for State, county, municipal, and other local purposes to the same extent as the property of private persons and taxes levied thereon shall be levied and collected in the manner as is now or may hereafter be provided by law for taxation of railroad property in this State."

The court simply held that the bridge could not avoid separate taxation by being leased to a railroad company and used by it as a part of its line. The court say (page 260):

"We conclude that that portion of this bridge indicated by section 7737 is subject to be taxed as the property of the Mississippi River Bridge Company under section 7755 of the revenue law."

This case, it is submitted, rather strengthens than weakens the proposition for which we contend.

Respectfully submitted.

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Supreme Court of the United States.

OCTOBER TERM, 1893.

Cases: Term Nos., 182, 183, and 414.

THE KEOKUK AND WESTERN RAILROAD COMPANY, *Plaintiff in Error*, *vs.* THE STATE OF MISSOURI *ex Rel.* WILLIAM H. WINE, *Collector, Defendant in Error.*	No. 182.
SAME, *Appellant*, *vs.* SCOTLAND COUNTY *et al.*, *Appellees.*	No. 183.
SAME, *Appellant*, *vs.* SAME, *Appellees.*	No. 414.

Brief for the Keokuk and Western R. R. Co. in Reply to Briefs of Defendant in Error and Appellees in said Cases.

BRIEF IN REPLY.

The Secor Decree; the Appellees' Objections to its Validity and Effect as an Estoppel Untenable.

Appellees, on page 22 of the brief submitted by Mr. Whiteside and others, insist that the Secor decree (Record, No. 414, p. 40) cannot be made available as against suc-

cessors in office or for other than the year 1880 and years anterior thereto, citing Beach *vs.* Shoenmaker, 18 Kansas, 147.

It will be noticed in the Kansas case the Court says there was no statement in the bill or any of the proceedings showing the property would be exempted after the year 1868.

"No claim for relief based upon other than a present use of the property for religious purposes. In other words, where the only matter presented in the proceedings was the taxes of 1868, and the only party defendant the then acting treasurer of the county, the court by its decree attempted to bind the county and all municipal authority forever and as to all subsequent taxes."

It needs only to be stated to show that this case has no application to the one at bar.

On pages 22 and 23 of Record, case 414, it will be seen that the amended bill in the Scior case went against *the counties themselves*, the *county courts*, and the *collectors*, and it was averred therein that the exemption began December, 1872, and would continue twenty years thereafter, and until December, 1892, and that the property had been exempted from that time (December, 1872) until now, the date of the filing of the bill, and that the said exemption would continue until December, 1892. There was a prayer for general relief in addition to the prayer in the original bill. These are sufficient allegations on which the court could found a binding decree against collecting or attempting to collect any taxes accruing between December, 1872, and December, 1892, and the court so decreed. Under the allegations in amended bill it was perfectly proper, under the authority of Thompson *vs.* United States, 103 U. S., 484, for the court to bind the parties then before it and *successors in office* during the entire time. This Court in that case says:

"The duty sought to be enforced devolves on no particular set of commissioners, and no right is in question

which will expire with the year. The duty is perpetual upon the present commissioners and their successors, and the peremptory writ may be directed to and enforced upon the commissioners of the town generally. To say otherwise would be a sacrifice of substance to form."

The court in the Secor case had jurisdiction, and its decree cannot be assailed in any proceeding after the term has expired at which it has been entered.

Bank of U. S. *vs.* Moss, 6 Howard, 31; Roman *vs.* Simon, 91 U. S., 149; Bronson *vs.* Shulton, 104 U. S., 410. In the case in 6 Howard, although the record failed to show diverse citizenship, the Court says:

"The judgment would not be void because it would be a judgment rendered by a court not of inferior but only limited jurisdiction, and the merits would have been investigated and decided by consent."

Again, it is asserted on the same page (22) of appellees' brief that the bringing of suit in case No. 183 becomes an estoppel against appellant in its proceedings in the Secor case, No. 414 herein. It will be observed that the two suits are not the same and do not pray the same relief. One prays for an original injunction against the counties and county officials, while the other is simply a supplemental bill by the appellant to be placed on the record in that suit as a party thereto for the purpose of enabling appellant to enforce any violation of that decree, asserting at the same time that defendants are doing and threatening to do acts in violation of the decree. The court below, as we have before pointed out, in dismissing the bill in 183, in effect said:

Whatever rights the complainants may have in Secor decree it must go there and get them. It could not have the benefit thereof in case No. 183 (Record in No. 183, page 199). This was on January 28, 1890 (Record, case 183, page 193). Accordingly, thereafter, March 17, 1890 (Record, 414, page 77) appellant filed its supplemental bill in the

Scoop case. The cases cited by appellees (page 22 of their brief herein) simply show that a cause of action or question not tried in the one case may still be litigated and tried in the other—the same position we have taken in citing cases of Russell *vs.* Place, 94 U. S., 606, and other cases in our brief (page 22) in case No. 414.

The Lease of September 3, 1880, to the Wabash Company Immaterial in these Suits and does not Defeat the Tax Exemption.

On pages 26, 27 of Appellee's said Brief the claim is made, under section 6865 of the Revision of the Statutes of Missouri of 1879 (which is the same as section 7717 of the Revision of 1889, cited in appendix to our brief in case 414), that the leasing by the Wabash Company of the railroad of the Missouri, Iowa and Nebraska Railway Company in 1880 had the effect, under that section of the statute, of rendering the property liable for taxes, and that thereafter, while they, said Wabash Company, had possession and control of the leased property, from 1880 until 1885, it was subject to taxation.

Our contention is that no such effect can be given to these sections. Appellees, in citing section 6865, omit the important part of the section, which provides taxes shall be levied in the *manner hereinafter set forth*. The section in full is given in the appendix to our brief in No. 414, and also sections 7718, 7729, 7733, 7734, 7737, and 7740. These sections show that it was the intention of the legislature simply to provide the *manner* of assessing and collecting taxes from railroad companies in the State of Missouri which were *subject to taxation*, and not to render leased property having a charter exemption from taxation liable for taxes simply

because it was leased by a domestic corporation of that State. This is evident from the whole purport of the chapter and the various sections referred to, and, as we have contended in our main brief, was to enable the State to have a *party against whom* it could assess the property and in whose *name* it could be *assessed*, and to obtain the valuation of such property, and against whom it could proceed in case taxes so levied were not paid.

The second section, 7718, being 6866 of the revision 1879, provides that the president or other chief officer of every railroad company whose road is now or which shall hereafter become so far completed and in operation as to run locomotive engines with freight or passenger cars thereon, shall furnish a sworn statement to the State auditor, on or before January 1st in each year, of its own railroad so far completed, including branch or leased roads in the State.

By section 6877 the same officer shall furnish the local authorities along the line of the road principally the same statement, and 6881 provides for the county court levying taxes upon the property, and 6882 (being 7334 of our appendix) provides for the county clerk, as soon as the tax book is completed, making out and certifying to the secretary or chief managing *officer* of the *railroad company* a statement of the taxes levied, and 6884 makes all taxes levied against any railroad *company according to the provisions of this article* due and collectible, and the next section creates a lien upon the property when levied against *such company*, and the other sections provide for seizure when such companies fails to pay, and after January 1 following, suit may be brought to collect such taxes, making *the* company in possession and control and against which the taxes have been levied the only proper defendant.

As we have said before, these sections are intended to provide the manner of collecting taxes from railroad property when taxes *can be legally levied* and collected on such property. This will most clearly appear when it is known that

on March 24, 1870 (Wagner's Missouri Statutes, 1870, page 314), the legislature of Missouri made ample provisions for the consolidation, leasing, selling and disposing of railroads in the state of Missouri, *domestic* and *foreign*, and providing, among other things, "that if a railroad company of *another state* shall lease a railroad the whole or part of which is in this State (Missouri), or make any arrangement for operating the same as provided in this act, or shall extend its railroad into this state or through this state, such part of said railroad as is within this state shall be subject to taxation." No such provision is made where the lease is to a *domestic* corporation. This general law has passed through the general revisions of the Missouri statutes for 1879 (page 825, R. S. 1879) and revision of 1889 (page 649, R. S. Mo. 1889) without a word of change. Here, then, we have a statute alongside of the statutes relied on by counsel for the appellees which limits the right and imposes the *conditions upon* railroad companies in the state when consolidating, *leasing*, or selling their property to or with other companies, and nowhere is there any provision that the leasing of a railroad in the State of Missouri to a corporation of that state renders the property of the one, if exempt from taxation, liable to taxes because of such leasing consolidating, or otherwise, and we have fully shown on page 22 of our brief in case 414 that simply leasing the property does not destroy the tax exemption unless the law authorizing the lease imposes such a condition in case of a lease.

The policy of Missouri on this subject is unmistakably shown by the act of 1885 (Laws 1885, page 229), which specifically enacts that in case a railroad having a tax exemption consolidates with another not having such exemption, the latter only is to be taxed. (*See Appendix hereto.*)

There never was any claim made in the Missouri courts that any other law than the act of 1879 imposed a condition

of forfeiture of a tax exemption in case of lease. Such has been the universal construction of these acts.

There never was any claim made, until made on this appeal, that any other law than the act of 1870, cited before, had any effect upon tax exemptions.

R. R. *vs.* Putnam, Sullivan & Linn Counties, 5 Dillon, 289, decided in 1879, cited by appellees.

State *ex rel.* C., B. & K. C. Ry, 89 Mo., 523, decided in 1886.

Railroad *vs.* Gutley, 122 U. S., 561, decided in 1887.

In the case in 5 Dill., p. 296, it is said:

"I place my judgment upon the provisions of section 2 of the act of the General Assembly of the State of Missouri, approved March 24, 1870. Those rights were acquired and held under this act, which expressly provides that such part of its railroad as is within this State shall be subject to taxation."

The supreme court of Missouri, in the case in 89 Mo., *supra*, quote the act of 1870 at length; then, in *italics*, say:

"*And provided further*, That if a railroad company of *another State* shall lease a railroad, the whole or a part of which is in this State, * * * such part of said railroad as is within this State shall be subject to taxation."

The same is true in the case in this Court (Railroad *vs.* Gutley, 122 U. S., 173), where his honor, Mr. Justice Harlan, quotes the act of March 24, 1870, at length and says the same section became section 57 of article 2, chap. 37, Wagner's Statutes of Missouri, 1872, and the conclusion is reached that the leasing or purchasing under that act subjected the Missouri part of the railroad to taxation. These decisions were all made after the revision of the Missouri statutes in 1879.

There could be no purpose of keeping the tax provisions of the act of 1870 in all of the revisions in a separate chap-

ter, and especially after the revision of 1879, if the revenue sections appellees cite and rely on have the effect to repeal the tax provisions of the act of 1870 and to make all leased railroads, whether to domestic or foreign corporations, subject to taxation.

The construction we give the two laws makes them entirely consistent, and allows both laws to stand and have effect—one, the act of 1870, to impose *conditions* of lease, consolidation, sale, while the revenue sections prescribe the *manner* of assessing and taxing railroads when the roads are taxable.

A special privilege of tax exemption may well exist with a general law authorizing taxation. These principles are elementary, and were early applied by the supreme court of Missouri in City of St. Louis *vs.* Alexander, 23 Mo., 483, and State *ex rel.* Macon County, 41 Mo., 430, where the court, construing a special privilege to take stock in a railroad company with a general law prohibiting the same, says:

"It is a rule in the construction of statutes that all acts passed on the same subject in *pari materia* must be taken and construed together. There is nothing irreconcilable between a general prohibition to subscribe for stock in a corporation and a permission to subscribe for stock in a particular corporation. Nothing is more common than a general prohibition with indulgence to particular individuals."

If the legislature had intended to impose the condition of forfeiture of tax exemption in passing the sections of the revenue law referred to, they would have said so in express terms. Not having said so, the presumption is they did not intend to do it. (See our Brief, case 182, p. 27.) The case cited by appellees, page 28 of their Brief, in 86 Ill., 352, is certainly consistent with the views we have expressed, and the case shows clearly that if defendants therein had established any valuable tax exemption it would have been sustained.

When counsel for appellees take the position that the

lease of 1880 had the effect under the said sections of the revenue law to deprive said Missouri, Iowa and Nebraska Railway Company of its tax exemption, another insuperable objection confronts them, for by these sections the assessment and levy of taxes for every year in which it is claimed the Wabash had possession and control of the Missouri, Iowa and Nebraska railway property were absolutely null and void.

The whole tenor of the act is to assess the leased property to the lessee company and to proceed against it for the taxes. No taxes are declared to be liens upon the railroad property except such as shall be levied in the name of lessee company. This company is to give in the property; its president or other chief officer is to make the sworn statement of the length of road, amount of rolling stock, and other property it had on the first day of June next preceding the first day of January, when such officer is required to make such sworn statement.

Then when the levy is made by the county court the clerk of such court is to furnish such officer with the amount of such taxes in each county and other municipality, and demand for payment is to be made from such company and suit against such company. Nothing is clearer under the revenue laws of Missouri for the taxation of railroads than that an assessment to the Missouri, Iowa and Nebraska Railway Company during the years when the Wabash Company had possession under the lease would be utterly void.

The supreme court of Missouri has always held that a valid assessment, as required by law, must be made before any tax can be levied or collected. (Abbott *ex.* Lindenhower, 42 Mo., 162; Blevins *ex.* Smith, 104 Mo., 590.) The court cites approvingly from Allen *ex.* Armstrong, 16 Iowa, 508, where that case lays down the following rule, to which the supreme court of Missouri says we see no sound objection:

"We state the principle, which must be legally and logically true, in this wise. If any given step or matter in the

exercise of the power to tax (as, for example, the fact of a levy by the proper authority) is so indispensable that without its performance no tax can be raised, then that step or matter, whatever it may be, cannot be dispensed with, and, with respect to that, the owner cannot be concluded from showing the truth by a mere legislative declaration to that effect."

Then, further, the supreme court of Missouri, 42 Mo., 162, 168, says:

"The assessors have no *jurisdiction to assess property otherwise than as the statute prescribed.* A void assessment (which is equivalent to no assessment at all) against the owner cannot be made the foundation for a sale and conveyance of his land, even by legislative enactment. A valid assessment is an essential prerequisite to the lawful exercise of the power of taxation."

This case is cited and followed in the latest decisions of the Missouri supreme court (Blevins *vs.* Smith, 104 Mo., 590). Now, when we apply this rule, an assessment made against the Missouri, Iowa and Nebraska Railway Company, when, as appellees allege, it was then being used by and under the control of the Wabash Company, right in the face of sections 6865 and 6866 of Rev. Stats. Mo., 1879, being sections 7717 and 7718 of Revision of 1889, shown in our appendix to case 414, and the other sections set out in said appendix, then of necessity the pretended levy against the Missouri, Iowa and Nebraska Railway Company for the same years would be utterly void, and any attempts to collect the same from the Missouri, Iowa and Nebraska Railway Company for those years could be enjoined by it the same as if no lease had been made.

We insist that in none of the three cases, 182, 183, and 414, can or does the question of the pretended lease of 1880 become *material* in the consideration of these cases, and the opinion of the supreme court of Missouri in No. 182 and of

Judge THAYER in cases 183 and 414 show these courts so considered the question.

It is impossible for it to arise in No. 182. That case involves only the tax for the year 1866.

The petition on which the suit was founded in the lower court in the State alleges (Record, p. 36) "that said assessment and levy were made while said [railroad] property "was in the *hands* and *under the control* of the Missouri, "Iowa and Nebraska Railway Company and after said levy "and before the filing of this suit [the suit against Keokuk "and Western R. R. Co., plaintiff in error] became the purchaser and owner and took control of the same" (Record, No. 182, p. 36). It is true an allegation was made in the reply by the defendant in error in such lower court (Record, p. 40) to the effect that a "sale" was made in the form of a lease to aidd Wabash Company, and that said Wabash Company would have paid off the debt secured by the decree of foreclosure of the said Missouri, Iowa and Nebraska Railway Company's bonds of October 22, 1880, but for the fact that said Wabash Company in 1884 became insolvent and failed to do so.

These allegations of the defendant in error in such lower court stood by the law of the State denied without any rejoinder—a reply in Missouri being the last pleading.

And it became the duty of such defendant to prove the allegations on trial; but the bill of exceptions (Record, pp. 48–61), containing all the evidence in the cause, will show that not one word was proven or admitted on the trial about the lease to the Wabash Company, and the judgment of such lower court (Record, pp. 43–45) shows that the court found as a fact that during the year 1886, the year for which the taxes were sued for, the Missouri, Iowa and Nebraska Railroad was *owned, operated, and controlled* by the Missouri, Iowa and Nebraska Railway Company, and that the levy of such taxes was made against such company—not a word anywhere about the Wabash Company.

And so it is clear that in No. 182 no question as to the effect of the alleged Wabash lease does or can arise on the record. But one question is made or arises in No. 182, and that is whether the Missouri, Iowa and Nebraska Railway Company is entitled to the tax exemption contained in the 9th section of the original Alexandria and Bloomfield charter. No other question was decided or even discussed by the supreme court of Missouri in its opinion in this cause (Record in No. 182, pp. 64–70, where the text of the opinion of the supreme court of Missouri is given).

In case 183 it will be seen (p. 27, Record) that complainant alleged that defendants, Scotland, Clark, and Schuyler Counties, were levying and attempting to collect taxes for the years 1883, 1884, 1885, 1886, and 1887.

Then (p. 33, Record) by amendment to the bill it is alleged that the levying and attempting to collect the taxes aforesaid was *long after* the Wabash lease had terminated, which was March 1, 1884. This allegation is not denied in the answers (see Record, p. 36), but a denial of any levy or pretended levy of any such taxes for 1883 and 1884, but says the court levied and had a right to levy for 1885, 1886, and 1887. These are clearly all *after* the termination of the lease.

The answer of *Scotland* county (Record, p. 38) is to the same effect, denying also that any levy or threatened levy is contemplated for the year 1883 and 1884. They also aver (p. 41, Record) that in 1885 they were proceeding to assess the property to the Wabash Company, but it became wholly insolvent, and it was then assessed to the said Missouri, Iowa and Nebraska Railway Company by name.

Schuyler County never filed any answer either in case 183 or 414, and made no defense whatever.

In case 414, Exhibit 1 (Record, p. 81) to the bill of revivor or supplemental bill shows that one Benjamin F. Bohm, collector of said Scotland county, had brought suit against the appellant, Keokuk and Western Railroad Com-

pany, wherein he alleged that from June 1, 1870, until December 3, 1886, the Missouri, Iowa and Nebraska Railway Company was the *owner and had control* of 22½ miles of railroad (being that part of the line in that county); that there was legally assessed and levied against such property for the year ending August or June, 1876, for State, county, school, and other municipal purposes, the aggregate sum of $1,991.29; for the year ending August or June, 1877, the sum of $2,866.43; for the year ending same time, 1878, $2,866.81; for the year 1880, $2,925.88; for 1881, $2,744.62; for 1882, $2,815. Then the petition makes claim for penalties about one per cent. per month, making a total claim against the company for these years of $16,252.39.

Exhibit 2 to Secor bill (p. 86, Record) contains a copy of petition wherein the same collector had brought suit in said Scotland county circuit court against appellant for the years 1872, 1873, 1874, 1875, and for 1879 and 1881, amounting in the aggregate to $20,367.75 and penalties.

Here is included the taxes for 1872, the year for which the same county sued the said Missouri, Iowa and Nebraska, and was defeated, it being the same case as reported in 65 Mo., p. 123, *supra*, and also the year 1879, the year in which the original bill in Secor case or No. 4149, this term, and which the court enjoined.

Surely appellant is entitled to be admitted as a party to the record in said Secor case under its supplemental bill to restrain such violations of the judgments and decrees of the State, Supreme, and United States circuit courts. All these suits are violations of the Secor decree, and in which no question of the Wabash lease can arise as a defense thereto. So, as we have said before, the Court must reverse each of the three cases 182, 183, and 414 for the causes we have assigned outside and irrespective of any consideration which might be due to such defense were it being urged in a case where its consideration became necessary and proper.

On page 35, Record, case 414 it will be seen that com-

plainants in the Secor case amended their bill on the 30th day of December, 1881—more than a year after the making of the alleged lease of September 1, 1880; that defendants in said cause took leave to plead thereto on or before February rules, 1882. Now, at this time, by amended bill, there was one single cause of action, and that was to restrain and enjoin the defendants' counties, county courts, collectors of revenue, and their successors from levying or collecting any tax on the property of the Missouri, Iowa and Nebraska Railway Company between December 1, 1872, and December 1, 1892.

The defendants, according to their contentions, knew of the lease of 1880, for they aver that the Wabash Company entered at once into possession after the making of said lease. Here, then, was a defense which, if valid, they were bound to make or be forever estopped, for, as between the same parties and in respect of the same cause of action, every question which was or could have been litigated becomes *res adjudicata*.

Herman on Estoppel, p. 125.
Cromwell *v.* Sac County, 94 U. S., 351.
Sosbit *v.* Riverside, 144 U. S., 610.

We quote at length the text from Herman on Estoppel, sec. 125, where, giving the result of many cases referred to, he says:

"A judgment decides every matter which pertains to the cause of action or the defense set up or which is involved in the measure of relief to which the cause of action or defense entitles the parties, even though such matter may not be set forth in the pleadings so as to admit proof and call for actual decision upon it. Whenever a matter is adjudicated and finally determined by a competent tribunal it is considered forever at rest. This is a principle upon which the repose of society mainly depends, and it therefore prevails, with a very few exceptions, throughout the civilized world. This principle not only embraces what actually was

determined, but also extends to every other matter which under the issues the parties might have litigated in the case—to everything within the *knowledge* of the parties which might have been set up as a ground of relief or defense. This general rule has not only gone unchallenged for more than half a century, but a uniform and unbroken line of cases has given it approval."

This language is so forcible and so far-reaching that it would seem at once to put at rest the question of a complete estoppel against appellees as to all the questions which were or might have been made in the cases in 65 Mo., 123, and the Secor case.

"Where the court has jurisdiction its judgment binds all parties, no matter how erroneous."

Herman on Estoppel, p. 381.

So Bigelow on Estoppel, 5th ed. p. 85, says:

"In the case of periodical-recurring liability, as in tax assessments or in debts due by installment, a former judgment may or may not bar a subsequent action. It cannot be a bar to an action for a sum subsequently falling due, it would seem, when the former judgment was for plaintiff, and in the case of taxes the same must be true when the judgment was for the defendant, if there has since been any change of law or fact in respect of the defendant, for generally speaking a judgment decides the rights of the parties only from the time of the suit or the time laid in the declaration. If, however, there has been no change, judgment based solely upon the validity of the demand and not upon facts in avoidance, such payment or compromise would doubtless operate as a bar. In the case of an action on a debt due by installments, as, for example, on a promissory note, judgment against the validity of the main obligation itself applying to all installments alike would preclude the obligee from suing upon any of the installments."

CONSENT DECREES are as binding as *res adjudicata* as any other.

Herman on Estoppel, secs. 49 and 50.

Black *vs.* Rogers, 75 Mo., 448.

Appellees urged the point below in cases 183 and 414 that the lease of 1880 was in effect a "sale" and had the effect to deprive the Missouri, Iowa and Nebraska Railway Company of the tax exemption, conceding then, as they do here now, on page 29 of their brief, that the lease to the Wabash Company could not, under the act of 1879, deprive the Missouri, Iowa and Nebraska Company of its tax exemption, the Wabash Company being a domestic corporation of Missouri. They then tried to make it appear the said lease amounted to a *sale* and the Missouri, Iowa and Nebraska Company was not thereafter the owner, but now, since the decision of the supreme court of Missouri in State *vs.* Missouri River Bridge Company (109 Mo., 253) to the contrary, they now change front and rely solely on the said sections of the revenue law. The court below, in its opinion in case No. 183 (Record, page 193) and in both of its opinions in case No. 414 (Record, pages 247–256), entirely disregarded the lease question as a defense, placing its decision in case No. 183 on the consolidation and in No. 414 on the question of privity.

Reply to Brief Submitted by John C. Moore.

This is not a suit against the State of Missouri, and hence is not one within the prohibition of the eleventh amendment to the Constitution of the United States.

The cases which have arisen in this Court upon the construction of the eleventh amendment to the Constitution of the United States are very numerous, and it would require a lengthy brief to review them all were such a course necessary; but this Court, in the case of Pennoyer *vs.* McConnaughy, 140 United States, page 1, has itself reviewed them

and placed them all in two classes, which it describes (p. 10) as follows:

"The first class is where the suit is brought against the officers of the State, as representing the State's action and liability, thus making it, though a party to the record, the real party against which the judgment will so operate as to compel it to specifically perform its contracts. (*In re* Ayers, 123 U. S., 443; Louisiana *vs.* Jumel, 107 U. S., 711; Antoni *vs.* Greenhow, 107 U. S., 769; Cunningham *vs.* Macon and Brunswick Railroad, 109 U. S., 446; Hagood *vs.* Southern, 117 U. S., 52).

"The other class is where a suit is brought against defendants, who, claiming to act as officers of the State, and under the color of an unconstitutional statute, commit acts of wrong and injury to the rights and property of the plaintiff acquired under a contract with the State. Such suit, whether brought to recover money or property in the hands of such defendants, unlawfully taken by them in behalf of the State or for compensation in damages or in a proper case where the remedy at law is inadequate, for an injunction to prevent such wrong and injury, or for a mandamus, in a like case, to enforce upon the defendant the performance of a plain, legal duty, purely ministerial, is not, within the meaning of the eleventh amendment, an action against the State. (Osborn *vs.* Bank of the United States, 9 Wheat., 738; Davis *vs.* Gray, 16 Wall., 203; Tomlinson *vs.* Branch, 15 Wall., 460; Litchfield *vs.* Webster County, 101 U. S., 773; Allen *vs.* Baltimore and Ohio Railroad, 114 U. S., 311; Board of Liquidation *vs.* McComb, 92 U. S., 531; Poindexter *vs.* Greenhow, 114 U. S., 270.")

The case made in behalf of the Keokuk and Western Railroad Company on these records is so clearly one falling in the second of these classes that it seems almost unnecessary to city any other authorities. We, however, select one or two of the most apposite out of the great number at hand as follows:

In Poindexter *vs.* Greenhow, 114 U. S., 288, the court says:

"The *ratio decidendi* in this class of cases is very plain. 'A defendant sued as a wrong-doer who seeks to substitute the

State in his place or to justify by the authority of the State or to defend on the ground that the State has adopted his act and exonerated him cannot rest on the bare assertion of his defense. He is bound to establish it. The State is a political corporate body, can act only through agents and can command only by laws. It is necessary, therefore, for such a defendant in order to complete his defense to produce a law of the State which constitutes his commission as its agent and a warrant for his act. This the defendant in the present case undertook to do."

Judge THAYER's opinion (Record in No. 414, at p. 246), that under the laws of Missouri these suits are not suits against the State of Missouri, is unquestionably sound.

The Charter Exemption from Taxation, when Accepted, Became an Irrepealable Contract, and was not Repealed by the Constitution of 1865, and could not be Withdrawn or Repealed by the Legislature.

We notice that one of the counsel for Scotland county (brief submitted by Mr. Moore) seeks to reagitate the question of the power of the legislature to repeal the exemption from taxes contained in the charter of the Alexandria and Bloomfield Company. It will be sufficient for us here to refer to the case in 65 Mo., 123, reprinted as an appendix to our brief, where it will be seen that the supreme court of Missouri passed directly on that question, holding that section 7 of the Corporation Laws of 1855, in force when the Alexandria and Bloomfield charter was passed in 1857, did not apply to such charter, and that therefore it was not competent for the legislature to repeal the charter exemption from taxation contained in said charter. Then, in the case contained in the record No. 182, Judge Black, in delivering the opinion of the supreme court of Missouri (99 Mo., 36, and page 64, record case 182), in referring to the decision in

the former case in that court in 65 Mo., 123, said: "*As to the questions actually considered in that case, it is sufficient to say we are satisfied with what was there said and ruled.*" (Record in No. 182, page 65.) He adds: "We adhere to what was then said in respect of the propositions of law which were actually considered." (*Ib.*, pages 69, 70.) He then proceeds to discuss the sole question as to the effect of the consolidation in question, claiming that this question was not *res judicata*, because, as he claims, but which we deny, that the effect of the consolidation was taken for granted. So it is clear, in any event, that the supreme court of Missouri, in both the case in 65 Mo., 123, and in this one (99 Mo., 35), settles the question beyond controversy that the legislature was incompetent to withdraw the tax exemption in question.

The act of February 27, 1875, referred to by the counsel, is so much waste paper—one of those impotent attempts so often made by legislatures to impair contracts by legislative fiat.

The Great Injustice which the Judgment and Decrees under Review Inflict upon the Keokuk and Western Railroad Company, an Innocent Purchaser.

This is well illustrated by the case of The State *v.* Kansas City and Northern Railway Company, 77 Mo., 202. It was held that an act providing for levying back taxes was retrospective and void as to an innocent purchaser.

Here, as the Court says, page 212, "the construction contended for by respondent's counsel * * * not only the mode but the subject of taxation was changed, so as to impose upon a purchaser a liability upon his property, a lien neither of which existed when he made his *purchase*. It would be in effect to charge one with a *pecuniary debt or*

obligation which rested upon another. There is no warrant in the Constitution for such legislation." The case further shows that prior to 1871 all railroad and corporate property in the State of Missouri was assessed and taxed to the stockholders; but at that time the policy of the State changed and it taxed the property and not the stock.

This also explains why, prior to 1865, the legislature, when designing to exempt any part of railroad and corporate property for a time it exempted the stock.

JOHN F. DILLON,
FELIX T. HUGHES, AND
THOMAS DE WITT CUYLER,
For the Keokuk and Western Railroad Company.

APPENDIX.

Act of March 24, 1885 (Laws of Mo., 1885, p. 229, Carried into the Revision of 1889 as part of Sec. 7725 of Art. VIII, "Assessment and Taxation of Railroads"

"SEC. 1. That section 6873 of chapter 145 of article 8 of the Revised Statutes of the State of Missouri, be amended by adding at the end of said section the following words: 'Provided that in any case where a company whose line of road is liable to taxation shall have been or may be consolidated into another corporation entitled by its charter or otherwise to exemption from county or other taxation that portion of the road which is liable to taxation as aforesaid shall be assessed separately and the value thereof be apportioned to the counties municipal townships cities or incorporated towns in which it is located,' so that said section as thus amended shall read as follows: 'Section 6873 [Board to apportion property assessed]. Said board shall apportion the aggregate value of all property hereinbefore specified belonging to or under the control of each railroad company, to each county, municipal township, city or incorporated town in which such road is located according to the ratio which the township, city or incorporated town shall bear to the whole length of whose line of road is liable to taxation 'shall have been or may become consolidated into another corporation entitled by its charter or otherwise to exemption from county or other taxation that portion of the road which is liable to taxation as aforesaid shall be assessed separately and the value thereof apportioned to the counties municipal townships cities or incorporated towns in which it is located.'

SEC. 2. There being no law authorizing the separate taxation and valuation of railroad companies subject to county and other taxation which have been consolidated with railroad corporations exempt from county or other taxation by their special charters or otherwise creates an emergency, therefore this act shall take effect and be in force from and after its passage."

Approved March 24, 1885.

Office Supreme Court U. S.
FILED.
DEC 18 1893
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1893.

TERM No. 183.

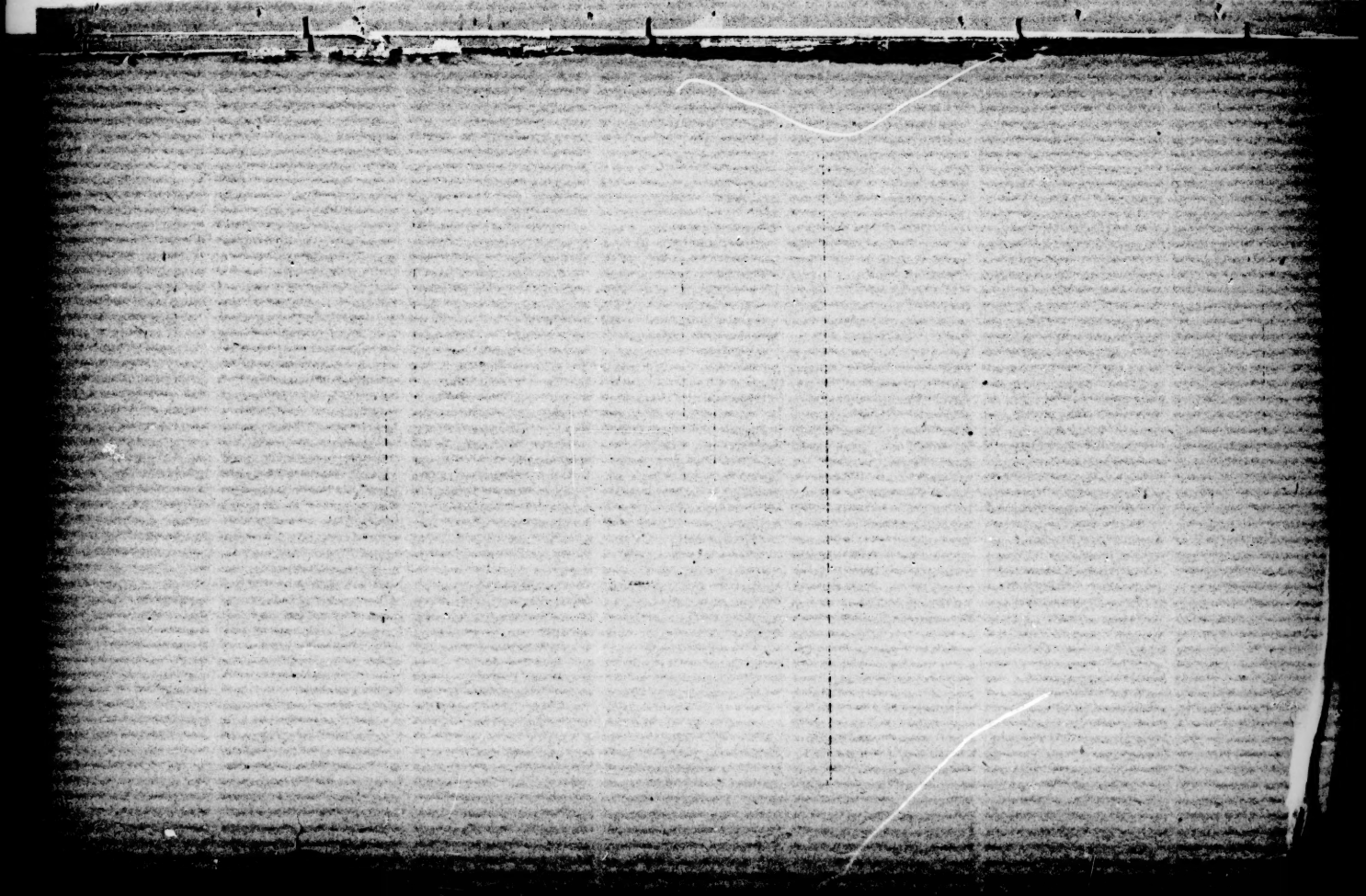
THE KEOKUK AND WESTERN RAILROAD COMPANY,
Appellant,
vs.
SCOTLAND COUNTY ET AL.,
Appellees.
} IN EQUITY.

APPEAL FROM CIRCUIT COURT UNITED STATES, NORTHERN DIVISION, EASTERN DISTRICT OF MISSOURI.

BRIEF FOR APPELLANT.

JOHN F. DILLON,
FELIX T. HUGHES,
THOMAS DE WITT CUYLER,
For Appellant.

C. G. Burgoyne, 146-150 Centre St., N. Y.



Supreme Court of the United States.

OCTOBER TERM, 1893. No. 183.

TERM No. 183.

THE KEOKUK AND WESTERN RAILROAD COMPANY, Appellant, vs. SCOTLAND COUNTY ET AL., Appellees.	In Equity.

APPEAL FROM CIRCUIT COURT UNITED STATES, NORTHERN DIVISION, EASTERN DISTRICT OF MISSOURI.

BRIEF FOR APPELLANT.

JOHN F. DILLON,
FELIX T. HUGHES AND
THOMAS DE WITT CUYLER,
For Appellant.

Bill in equity to enjoin County Courts and collectors of Clark, Scotland and Schuyler Counties, in Missouri,

from levying and collecting taxes on the railway property of appellant through these counties.

Statement of Facts.

The facts in this case are like those of No. 182 (*The Keokuk & Western R. R. Co. vs. State of Missouri on the relation of William H. Wine*), submitted herewith, except that the latter was a suit at law brought by the State at the relation of the Collector of Revenue of the defendant Scotland County for the collection of the taxes assessed against appellant company for 1886, while this was a bill in equity filed in the Circuit Court below by appellant, a corporation of Iowa and a citizen of that State, to restrain the defendants, citizens of Missouri, from levying or collecting any taxes for the years in which the United States Circuit Court for the Eastern District of Missouri, in the Secor case, and also the Supreme Court of the State, had both held the property of the company not to be subject to taxation.

As there will be no question as to the regularity of the proceedings, and the Court below held the same way as the Supreme Court of the State held in No. 182, to wit, that the consolidation in question had the effect, under the laws of the State, to deprive appellant or its property of the exemption from taxation in question, and as we have discussed that question at length in our brief in case 182 on that point, we deem it unnecessary to repeat the argument made in that case, viz., *The Keokuk and Western Railroad Company vs. The State of Missouri at the relation of William H. Wine, Collector.* We accordingly submit this appeal on our brief and

argument made in that case, and on our brief and argument in the associated case, No. 414, of *The Keokuk and Western Railroad Company, Appellant, vs. The County Court of Scotland County and others.*

The decree below should be reversed.

JOHN F. DILLON,
FELIX T. HUGHES and
THOMAS DE WITT CUYLER,
For Appellant.